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JURY TRIAL - DAY ONE

United States District Court
1 Courthouse Way, Courtroom 19
Boston, Massachusetts 02210
January 30, 2023

LEE A. MARZILLI
KATHLEEN SILVA
OFFICIAL COURT REPORTERS
United States District Court
1 Courthouse Way, Room 7200
Boston, MA 02210
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1 A P P E A R A N C E S:

2 SETH B. KOSTO, ESQ. and STEPHEN E. FRANK, ESQ.,
3 Assistant United States Attorneys, Office of the United States
4 Attorney, 1 Courthouse Way, Room 9200, Boston, Massachusetts,
5 02210, for the Plaintiff.

6 MAKSIM NEMTSEV, ESQ., 20 Park Plaza, Suite 1000,
7 Boston, Massachusetts, 02116, for the Defendant.

8 MARC FERNICH, ESQ., Law Office of Marc Fernich,
9 800 Third Avenue, Suite Floor 20, New York, New York, 10022,
10 for the Defendant.

11 ALSO PRESENT:

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P R O C E E D I N G S

THE CLERK: Court calls Criminal Action 21-10173, United States v. Klyushin. Could counsel please identify themselves.

MR. FRANK: Stephen Frank and Seth Kosto for the United States. Good morning, your Honor.

MR. KOSTO: Good morning.

MR. NEMTSEV: Good morning, your Honor. Max Nemtsev and Marc Fernich on behalf of Mr. Klyushin.

MR. FERNICH: Good morning, Judge.

THE COURT: Good morning.

(Interpreters duly sworn.)

THE COURT: All right, thank you. You may be seated.

Mr. Klyushin, welcome. I'm glad you got your suit. It's always a moment of stress for me to make sure they get the clothes to you correctly.

So something happened on Saturday, as you know. There was an article in the Boston Globe about this case, above the folds, big headlines. So I wanted to discuss with you the appropriate way to screen for that. What I'm thinking is the following: I will ask all the standard questions. We will winnow it down -- you know, people who can't serve because they have small children or they're sick, or whatever the reasons are -- and then I will do an individual voir dire with respect to any exposure to the press. And you're welcome to follow up

1 on that if you think I'm not asking enough questions. My guess
2 is we'll lose maybe 20, 30 people just because of life -- you
3 know, they've got kids in school or whatever -- but then we're
4 going to have a fair number of people who are going to be left.
5 And I'll ask also all the other questions about bias and
6 prejudice and et cetera, but I don't know how to deal with the
7 pretrial publicity thing other than one by one because it was
8 such a prominent article.

9 Has anyone not had a chance to see it? You've got it,
08:48 10 all right. You're on top of it.

11 MR. NEMTSEV: In print, Judge. I had to run around
12 and buy all the copies before people bought them.

13 MR. FERNICH: So that means nobody will have seen it
14 because he bought up all the papers.

15 THE COURT: So, I mean, I've had many -- I'm sort of
16 an older judge at this point, maybe not older, maybe just old,
17 but I've had high-profile cases. I'm confident we can get a
18 jury. I just need to make sure that somebody hasn't read that
19 through and through and can't put it aside. I don't think just
08:48 20 because you've read it means you're necessarily off the jury,
21 but what it does mean is, we will need to probe. So I'll ask
22 first, "Have you read any newspaper articles about the case?"
23 And then if they have, I'm going to ask them what they remember
24 about it. And then I'm going to ask them, "Do you think that
25 you can put that aside and just decide the case based on the

1 evidence?" And then you can exercise peremptories as
2 appropriate.

3 MR. KOSTO: We think that's appropriate, your Honor.

4 MR. FRANK: Does your Honor think the first question,
5 "Have you read anything about the case," would be asked of
6 everybody? Or were you going to do that --

7 THE COURT: I'm sorry?

8 MR. FRANK: Sorry. Would you anticipate asking the
9 first question, "Have you read anything about the case"
08:49 10 generally?

11 THE COURT: No, no. I'm going to go through, "Do you
12 know anything about this case?" I may get certain people that
13 way. "Do you know any of the witnesses?" You know, there's
14 the standard --

15 MR. FRANK: Generally.

16 THE COURT: Yes, general.

17 MR. FRANK: I see.

18 THE COURT: Is someone biased in favor of the
19 government? Is someone biased against Russian nationals? And,
08:49 20 once again, I'm not going to mention the war in Ukraine. This
21 is not about the war in Ukraine, but I will mention the Russian
22 Ministry, as requested, because you're planning on putting in
23 the website.

24 By the way, what is the Russian Ministry? When it
25 says it on the website, I don't even know what that is. Does

1 that just simply mean, like, you're working for the Department
2 of Justice? Does anyone know?

3 MR. NEMTSEV: The website I believe says, your Honor,
4 that there's a contract with the Office or the President of the
5 Russian Federation. So it's a contract with Mr. Putin's office
6 to provide services to him.

7 MR. FRANK: We've redacted that.

8 THE COURT: Oh, you've redacted it, so I don't have to
9 go into it. That's great. That's great.

08:50 10 MR. FRANK: We've redacted the portion that says "The
11 Office of the Presidential Administration," or whatever that
12 language is. We've left in the portion that references the
13 government generally, since that was unobjected to.

14 THE COURT: Okay. Okay, good, that makes my job
15 easier. So that's number one. We're hoping to get around 84
16 people, and as I said, we're going to try and do openings
17 today. We ordered lunch for the jury. But the big surprise,
18 if you will, is I didn't expect that newspaper article.

19 So let me ask you this -- and, of course, this is
08:51 20 correct for all of you -- obviously no one should be talking to
21 the press about the case, and we'll go from there.

22 Now, the second thing is, I got a motion in limine
23 over the weekend. I don't want you putting that in in your
24 opening, but I actually think it's relevant that license plates
25 say "13" on them, the three of them. But the question I had

1 for you, so it isn't quite so obvious, can you blow up those
2 pictures and just show the license plates without having the
3 pictures of the full cars?

4 MR. FRANK: It would be confusing, I think, your
5 Honor, to just have --

6 THE COURT: Why? I mean, people know it's a car.

7 MR. FRANK: Because there are three license plates and
8 four cars, and it would --

9 THE COURT: Well, if there's a way of doing it. I
08:52 10 don't think the point is that they're Porsches.

11 MR. FRANK: I agree with your Honor, and --

12 THE COURT: The point is the license plates having a
13 "13" on them. So I think what's most important is seeing the
14 license plates. And I know on my phone, not that I'm
15 Miss Photo Genius, you can sort of expand it out to see the
16 licenses. So see if you can do that. That would be great.
17 But I am going to allow them to talk about the licenses.

18 MR. FRANK: Yes, your Honor, and we were only going to
19 refer to them as cars. We're not going to refer to them as a
08:52 20 particular model of car.

21 THE COURT: Okay, all right, that's great.

22 MR. FRANK: If we do that, your Honor, without making
23 it visible what kind of car it is, can we put that in the
24 opening?

25 THE COURT: You can sort of tell.

1 MR. FRANK: I mean if we blow it up so that it's
2 focused on those license plates?

3 THE COURT: But try and blow it up so it's focused on
4 the license.

5 MR. FRANK: And then we can use it?

6 THE COURT: Huh?

7 MR. FRANK: In that case, we can use it?

8 THE COURT: Yes.

9 MR. FRANK: In the opening?

08:53 10 THE COURT: I mean, I want to see it, but not in the
11 opening. I mean, you can talk about it in the opening, but
12 don't use the pictures.

13 MR. FRANK: Can we use the yacht in the opening?
14 We're not using the yacht in the opening.

15 THE COURT: Anything else we should deal with right
16 now? We should be getting the jurors. We're the only ones
17 impanelling today.

18 THE CLERK: It could be half an hour.

19 THE COURT: Why?

08:53 20 THE CLERK: That's how long it takes them.

21 THE COURT: They may be watching the video or
22 something?

23 (Discussion between the Court and Clerk.)

24 THE COURT: You could probably go grab coffee if you
25 wanted to, but it's probably going to be half an hour.

1 MR. KOSTO: Since we have a few minutes, your Honor, I
2 did want to ask the Court if Special Agent Hitchcock, who's the
3 case agent from the FBI, who we do anticipate will be a
4 witness, can be in the courtroom during the course of the
5 proceedings.

6 THE COURT: Yes.

7 MR. KOSTO: The government will also have a summary
8 witness, Karyn Yanochko, an auditor from our office who we
9 would also ask to be present to enable -- to assist in her
08:54 10 summary testimony. She's summarizing evidence --

11 THE COURT: Case agents I usually allow in. I'm less
12 firm about the summary witness.

13 MR. NEMTSEV: Your Honor, I have concern about the
14 case agent being here as well. It's not like he's their first
15 witness. He's going to listen --

16 THE COURT: Is the case agent testifying?

17 MR. KOSTO: Yes, the case agent is testifying.

18 THE COURT: Well, it's generally the case that there
19 is some representative from the government here, so --

08:54 20 MR. NEMTSEV: I understand. I just don't want them --

21 THE COURT: I don't need two of them.

22 MR. FRANK: Only one.

23 THE COURT: Only one.

24 MR. NEMTSEV: And, your Honor, I did have a follow-up
25 question about that lengthy 4,000-line exhibit.

1 THE COURT: Yes, fair question. So here's the thing:
2 I'm not going to read it.

3 MR. NEMTSEV: Understood.

4 THE COURT: But I am going to allow you to protest any
5 sections of it you think are unfairly prejudicial. Like, my
6 law clerk saw a few lines in there that we thought were
7 inappropriate. But otherwise it does seem relevant if this
8 discussion is between Mr. Klyushin and his investors. So if
9 there's something that's overly prejudicial, you let me know,
08:54 10 and I'll mark it out. But right now, it's just marked for ID.
11 And I want anything that the government is focusing on to have,
12 like -- I forget what number it is. Do you remember?

13 MR. FRANK: Well, there's several. There's the
14 WhatsApp chat between Mr. Ermakov and Mr. Klyushin. That's
15 Exhibit 151. There's the Threema chat that involves
16 Mr. Ermakov, Mr. Rumiantcev, and Mr. Klyushin. That's 46.
17 We're going to --

18 THE COURT: What was the first number?

19 MR. FRANK: The WhatsApp is 151. The Threema is 46.

08:55 20 With respect to the investor chat, we've already
21 designated the sections that we intend to use. There are two.
22 That's 152.

23 THE COURT: All right, so hopefully -- I will allow
24 the -- it's only being marked for identification right now.

25 MR. FRANK: Yes, your Honor.

1 THE COURT: So that to the extent you have things that
2 you think are either irrelevant or overly prejudicial, I'll
3 take them one by one. That's how I'll do it.

4 MR. NEMTSEV: Is my understanding correct that the
5 government would pick the excerpts they would want to use, and
6 we'd have an opportunity to review them and object to them?

7 THE COURT: Yes, yes.

8 MR. NEMTSEV: Is my understanding also correct, your
9 Honor, that I could use excerpts of that chat as well because
08:56 10 that's something that the government has --

11 MR. FRANK: No, your Honor. That's hearsay for them.

12 THE COURT: Wait a minute. It's called the "doctrine
13 of completeness." If there are portions of it that round out
14 the conversation, I will allow it.

15 MR. FRANK: Understood, your Honor, but the doctrine
16 of completeness then refers to the entire chat. They can't
17 have it both ways. They can't say --

18 THE COURT: Well, you can't have it both ways either.
19 If you want the whole thing in, I'd let them use the whole
08:56 20 thing.

21 MR. FRANK: I've stipulated.

22 THE COURT: What?

23 MR. FRANK: We agree with that, your Honor.

24 MR. FERNICH: But the doctrine of completeness refers
25 to the adverse party. They're trying to use the doctrine --

1 THE COURT: Let me just say, do you want to agree to
2 the whole thing except to the extent you move to strike for
3 prejudicial, and then you can use whatever you want?

4 MR. FERNICH: Give me one second with Mr. --

5 THE COURT: I mean, of course I'm not going to let in
6 anything -- like, there's one that says -- I forget. There
7 were a few things my law clerk --

8 MR. FERNICH: There's an arguably anti-Semitic
9 reference in the Threema chat. In the WhatsApp chat, there are
08:57 10 numerous references to Putin and various Russian government
11 agencies.

12 THE COURT: There were some derogatory things said
13 about Americans, so, I mean, I'm happy to strike all of that.

14 MR. FERNICH: Yes, we'll get that to your Honor.

15 MR. FRANK: We have no objection. We're not intending
16 to focus on those things at all, so if they want to redact
17 those, we have no objection.

18 (Discussion off the record between defense counsel.)

19 MR. NEMTSEV: So chat number 146, the Threema chat, I
08:57 20 agree, most of that is relevant, and we could go and exclude
21 certain portions that the government would want to focus on if
22 we believe that they're prejudicial. So I believe most of that
23 would come in.

24 The WhatsApp chat, 151, most of that is irrelevant to
25 any trading. It's just a personal chat between Mr. Klyushin

1 and Mr. Ermakov, and there's obviously issues there as well.
2 And it's lengthy. It's a very long chat. It's about 3,000
3 messages. I don't believe that --

4 THE COURT: I didn't read it, so you're going to have
5 to tell me. But if you don't want to agree to the whole thing,
6 fine. They'll tell you what excerpts they're going to use, and
7 then you're going to have to squeeze into the doctrine of
8 completeness.

9 MR. NEMTSEV: Understood, your Honor.

08:58 10 THE COURT: Okay?

11 MR. FRANK: Yes, and that's where we have a slight
12 objection, your Honor. We think that the doctrine of
13 completeness then means the document comes in. They can't pick
14 other chats that they want --

15 THE COURT: I don't know. I can't do it in the
16 abstract. I guarantee you I didn't sit and read every single
17 one of them.

18 MR. FRANK: Understood, your Honor, and that's --

19 THE COURT: And I'm relying on you as the attorneys as
08:58 20 to what you need, what you need for the doctrine of completeness,
21 and whether or not you want to put in the whole thing so you
22 don't have to worry about it, but you'll let me know.

23 MR. KOSTO: Your Honor, in the abstract, what we're
24 thinking about is, if Lines 10 through 20, if we offer them,
25 the doctrine of completeness talks about Lines 1 through 10 and

1 21 through 30 but not 400 through 500.

2 THE COURT: You may be right, unless it's referring to
3 the same subject matter. I mean, I don't want to -- this case
4 isn't going to rise and fall on that.

5 So is your expert feeling better?

6 MR. NEMTSEV: Our expert, yes, he is. He is, your
7 Honor, Mr. Cullan. He is feeling better. And I actually had a
8 question whether our experts could sit here and listen to the
9 testimony of the government's experts?

08:59 10 THE COURT: Yes.

11 MR. NEMTSEV: All right, thank you, your Honor.

12 THE COURT: And vice versa.

13 MR. NEMTSEV: And vice versa, of course.

14 Oh, and, your Honor, one other question that I had,
15 the government -- and I believe your Honor ruled on this --
16 Micfo, that company that has the server in Boston, and their
17 conviction for fraud, you said that we could explore that.

18 THE COURT: Yes.

19 MR. NEMTSEV: Understood. It's just the government
08:59 20 has objected to it, and I intend to reference it. I don't
21 intend to put the indictment in but reference it during the
22 opening.

23 THE COURT: Was it convicted of fraud?

24 MR. NEMTSEV: It was, on ten counts, your Honor.

25 MR. KOSTO: Your Honor, Rule 609 doesn't allow the

1 impeachment of, let alone a representative of Micfo. These are
2 not Micfo documents.

3 THE COURT: Well, as I understand, the representative
4 is impeaching the company.

5 MR. KOSTO: But the company isn't testifying.
6 StackPath is testifying, and StackPath was not convicted.

7 THE COURT: I'm going to allow them under the
8 liability prong because you're relying -- let me put it this
9 way: I don't know what your alternative path was after we went
09:00 10 off from the first approach from whatever that was, the
11 software program. I don't know what the path is, but if it's
12 on the reliability of the business records, I think they have
13 the right to say that things weren't always so reliable, so --

14 MR. KOSTO: But the point on that, your Honor, is,
15 that doesn't mean that a press release or an indictment delving
16 into the facts of the case can come in as exhibits.

17 THE COURT: No. It's just a conviction. It's like
18 a -- it's just a conviction.

19 MR. KOSTO: But what's marked as a proposed exhibit by
09:00 20 the defense, and the government has objected to, is the
21 indictment, a long speaking indictment, the press release
22 covering the conviction --

23 THE COURT: Yes, that's not coming in.

24 MR. KOSTO: -- and the plea agreement.

25 THE COURT: It's the fact that they were convicted

1 of --

2 MR. NEMTSEV: No, your Honor. I put it in there on
3 the list. I don't intend to introduce it or use it, but I do
4 intend to ask the witnesses questions.

5 THE COURT: The reliability -- I don't really know the
6 alternative path.

7 MR. FRANK: But the issue with that, your Honor, is
8 that the issue in that case was not the reliability of their
9 billing records. The issue in that case is that they were
09:01 10 getting too many IP addresses fraudulently.

11 MR. KOSTO: Not that they weren't putting the IP
12 addresses where they were supposed to go.

13 MR. FRANK: And so it's entirely misleading to suggest
14 that --

15 THE COURT: Well, then you can rehabilitate, so --

16 MR. FRANK: But there's no one to rehabilitate. We're
17 not putting on a witness from Micfo.

18 MR. FERNICH: Judge, under Rule 806, they're putting
19 on testimonial hearsay --

09:01 20 MR. FRANK: No, we're not.

21 MR. FERNICH: -- assertions by Micfo through
22 StackPath, which StackPath is relying on the business records
23 of Micfo for the truth of the matters asserted therein. Under
24 Rule 806 and 608, we can cross on the stuff; and if there's a
25 denial, your Honor can determine whether it's a collateral

1 matter.

2 THE COURT: I never dealt with 609 and impeaching a
3 corporation.

4 MR. FRANK: We're not putting in testimonial hearsay.

5 MR. FERNICH: You are.

6 THE COURT: Anyway, this has not been -- I don't want
7 to act on the fly on this.

8 MR. FRANK: Sure. We would just ask, your Honor, that
9 they not be permitted to open on it, the same way that we're
09:02 10 not opening with a photograph of the Porsches.

11 THE COURT: I agree with that. Don't open on it
12 because I don't really understand it well enough. It does
13 strike me that if in fact the venue is being based upon a line
14 of business records, and one of the places where the business
15 records came from was from a company that had been indicted --
16 more accurately, convicted of fraud -- they should at the very
17 least be allowed to ask that question, but not the indictment.
18 And then if you want to follow up by "What was the basis for
19 the indictment?" then you can all argue.

09:02 20 MR. FRANK: But the witness is not going to know that.

21 MR. KOSTO: The record that's being offered is not a
22 record of the indicted company. It's StackPath's record.

23 THE COURT: That's why I need to hear more about it.
24 Did StackPath get it from this indicted company?

25 MR. KOSTO: StackPath received an invoice. They were

1 charged for the use of the IP address. They kept it in the
2 ordinary course of business. It's an --

3 THE COURT: Yes, but the invoice was generated by a
4 company that was convicted of fraud, right?

5 MR. FRANK: For something totally --

6 MR. KOSTO: But the company was convicted of fraud for
7 something unrelated to the allegations in this case, which
8 would open up 403 --

9 THE COURT: I don't know anything. This has not been
09:03 10 fully vetted with me.

11 MR. FRANK: We'll submit a brief, your Honor.

12 THE COURT: I don't know anything, just because we
13 went off this path, right, when you weren't going to use the
14 software company? So you had told me there were a series of --

15 MR. FRANK: Yes, your Honor.

16 THE COURT: -- corporate documents that were going to
17 show that the IP address was here in Boston for venue.

18 MR. FRANK: Yes.

19 THE COURT: Fair enough. But if one of the key pieces
09:03 20 of documents is from a company that was convicted of fraud,
21 it's at least worth, by exploring that issue, not to exclude
22 it; just to go to the weight of the causal inferences.

23 So have you shared with the defense the documents
24 you're going to use for the first witness?

25 MR. KOSTO: We will today, your Honor. We had a

1 switch of order, but --

2 THE COURT: Well, who's the first new witness?

3 MR. KOSTO: Marc Brawner, who was the incident
4 response for Toppan Merrill.

5 THE COURT: And that's one of the financial analysts?

6 MR. KOSTO: No. He is one of the technical employees
7 from a consultancy that responded to the data breach at Toppan
8 Merrill. He'll talk about what happened at Toppan Merrill.

9 THE COURT: All right, thank you.

09:04 10 Let me just say, I expect press coverage on all of
11 this, and one of the things that's making me just a little bit
12 nervous is how much of this gets into the press about the jury
13 voir dire. So I'm trying to think now whether we should do it
14 from here or up at sidebar. If we do it from here, though, I
15 may just say Juror No. 5.

16 THE CLERK: Yes, and do you want them to go next
17 door -- it's open, the courtroom -- like we did in the Varsity
18 Blues?

19 THE COURT: Yes. As soon as we get through all the
09:05 20 initial questions and we get it down to about forty or fifty
21 people, we'll put people next door, and we'll bring them in and
22 we won't use their names, just their numbers. Does everyone
23 understand that?

24 THE CLERK: Just so you know, Judge, I can explain it.
25 Each juror when they come in will have their numbers on a sheet

1 of paper they'll be holding up, so you'll know by their number
2 who they are, okay? You'll have a list. You know what the
3 list looks like. And every single juror will have a piece of
4 paper that will have their number, so if we call them up,
5 you'll know them by the number. And then you'll refer to the
6 list, so you'll know their name.

7 THE COURT: But it's quite possible that, you know,
8 we'll get coverage in the paper, and I don't want jurors' names
9 showing up in the paper.

09:06 10 Actually, let me see counsel for one second at sidebar
11 about that subject.

12 SIDEBAR CONFERENCE:

13 THE COURT: Good morning to everyone. So I just saw
14 Shelly Murphy from the Globe come in, and we've also had
15 inquiries from some Russian press. I forget the name of it.
16 But, in any event, I'm expecting press coverage, and I want
17 to -- as you know, maybe you don't, the District Court's been
18 following this pretty closely, but at some point the press have
19 the right to addresses and towns that they live in, the names
09:07 20 and all that kind of stuff, and I'm at least going to try and
21 protect this jury during the three weeks that the trial is
22 going to last.

23 MR. NEMTSEV: Sure.

24 MR. KOSTO: It seems appropriate, your Honor.

25 THE COURT: So I just wanted to flag where my sudden

1 concern came from. So we'll bring the jurors up here. Would
2 Mr. Klyushin like to stand up here? The issue is --

3 THE CLERK: If he comes up, Judge, I have to bring the
4 interpreters up too.

5 THE COURT: Would you talk to him about it? And we
6 have to bring the interpreter up too. I'm happy to do that.
7 Sometimes that makes the jurors nervous, but he may want to do
8 it, so his call. So we'll do the first traunch of questions
9 here, and then I don't know what we'll do in terms of the
09:08 10 exposure to the press.

11 MR. FERNICH: Judge, we certainly have no objection to
12 any of the procedures the Court has outlined. For the Court's
13 protection, so this doesn't become an issue later, to the
14 extent the press is being partially excluded from any part of
15 the jury selection, your Honor may want to place *Waller v.*
16 *Georgia* findings on the record. There's, like, four prongs.

17 THE COURT: Well, that's why I'm raising it. Am I
18 better off having the person there and just doing the number?
19 It's a little less intimate. I have some concerns about that.
09:09 20 I don't know. I don't know.

21 MR. FERNICH: Your Honor, we prefer the approach that
22 the Court has outlined, and there's a public issue.

23 THE COURT: What do you all think?

24 MR. FRANK: We defer to the Court, Judge. I think
25 there is a procedure that your Honor -- I'd have to look at

1 this, but in prior cases, I've had the jury being anonymized,
2 and the press could not find out their identities.

3 THE COURT: Well, I don't know.

4 MR. FRANK: And I think in this case, that makes sense
5 for other reasons as well, so --

6 MR. FERNICH: And I object to that procedure because --

7 THE COURT: Well, I'm not going to do that right now,
8 but what I am worried about, if we have press coverage and we
9 do it in the open, it's --

09:09 10 MR. FERNICH: I think that your Honor could easily do
11 a partial, to the extent that it's a partial closure, just by
12 outlining -- I can pull up *Waller*.

13 THE COURT: Well, I'm going to ask all the questions
14 here, and then I'm going to let people come up and talk to me
15 in private, so most of it will be open; and if I get an
16 objection, I get an objection.

17 MR. FERNICH: Right. I mean, it's not going to come
18 from us, obviously.

19 THE COURT: Yes, I mean, so I'm going to ask all the
09:10 20 questions and ask each and every person that's got an
21 affirmative answer to raise their hand, and then I'll say "Come
22 on up." And then with respect to press coverage or anything
23 else -- for example, they may be biased against a Russian
24 national -- we're going to do in a written questionnaire.

25 MR. FERNICH: I mean, there will be a transcript

1 available for the press. You know, that will obviously be an
2 adequate substitute to the degree that they're not having
3 access to the portion of the sidebar, of the voir dire that's
4 conducted at sidebar.

5 MR. KOSTO: I've not had the experience of the press
6 seeking to be present and heard during a sidebar.

7 THE COURT: I've been doing it for 30 years at
8 sidebar, but, I don't know, I mean, some of the bigger cases
9 like --

09:10 10 MR. FERNICH: You know, we've had it a little bit at
11 home. I don't expect this to be a press case like that, but we
12 didn't expect what happened on Saturday either. If members of
13 the press make a request, I suppose we could deal with it then,
14 and the Court could place the *Waller* findings on the record.

15 MR. FRANK: In the Varsity Blues cases, we had the
16 voir dire at sidebar.

17 THE COURT: I've always had the voir dire at sidebar.
18 You get a more candid result than screaming out from the back
19 of the room, "Yeah, I've got a problem with Russia," or, "Yeah,
09:11 20 I've got a problem with --" I mean, what would be the right
21 word? -- whatever. Boom, off the jury.

22 MR. NEMTSEV: Russian hacking.

23 MR. FERNICH: Allegations of hacking, computer hacking
24 by Russians.

25 THE COURT: Yes, it just would be hard for them to

1 yell it out, right, across the abyss, as they say? Okay, all
2 right, good.

3 MR. KOSTO: We'll see you shortly.

4 THE COURT: We'll see you shortly.

5 (End of sidebar conference.)

6 (A recess was taken, 9:12 a.m.)

7 (Resumed, 10:07 a.m.)

8 (Jury pool present in the courtroom.)

9 THE CLERK: Court calls Criminal Action 21-10104,
10:08 10 United States v. Mr. Klyushin. You may all be seated. Thank
11 you.

12 THE COURT: Good morning to everyone. I see some
13 people crowded in the back there, so if you just -- I'm not
14 sure who that is, but you're certainly welcome. This is an
15 open proceeding.

16 So let me begin by introducing myself. My name is
17 Judge Saris, and this morning I will be impanelling a jury in a
18 criminal case. In order to do that, I introduce you to the
19 attorneys, to the defendant. I read you a list of potential
10:09 20 witnesses, and I ask you a long series of questions designed to
21 insure that you can serve in a fair and impartial manner.

22 So why don't I first ask Ms. Molloy to please put you
23 under oath. Thank you.

24 THE CLERK: Could you all please stand and raise your
25 right hand.

1 (Jury pool duly sworn.)

2 THE COURT: All right, so this has multiple stages to
3 it, all right? And the first stage is, I'm going to ask you,
4 as I mentioned, a series of questions. If you have an
5 affirmative response, please raise your hand. At the end of
6 all of my questions, I'm going to ask each and every person who
7 has raised his or her hand to come up and see me at sidebar.
8 Sometimes the answer is quite simple like, for example, "I
9 might know a witness," or, for example, there's a reason you
10:10 10 can't sit, maybe a health reason or whatever. But sometimes
11 it's more complex. Don't forget you'll be under oath here, so
12 this will be the first part of our impanelment process.

13 So why don't I begin by asking the attorneys for the
14 government to please introduce themselves. Thank you.

15 MR. FRANK: Thank you, your Honor. Good morning,
16 ladies and gentlemen. My name is Stephen Frank. I'm an
17 Assistant United States Attorney here in Boston.

18 MR. KOSTO: Good morning, ladies and gentlemen. My
19 name is Seth Kosto. I'm also an Assistant U.S. Attorney here
10:10 20 in Boston.

21 THE COURT: Does anyone here know Mr. Kosto or
22 Mr. Frank? Anyone here know anything about them? Anyone here
23 work for the U.S. Attorney's Office in Boston? Anyone here
24 have any close family members or friends who work for the U.S.
25 Attorney's Office in Boston, or I should say Worcester or

1 Springfield? All right, a few people, so you'll remember if
2 you've raised your hands.

3 Is there anyone here who has any close family members
4 or friends who work for any prosecutor's office, federal,
5 state, or local? All right, three or four people. All right,
6 so you're going to remember, and when I see you at sidebar,
7 you're going to say what that relationship is.

8 Now I'm going to ask defense counsel to please
9 introduce themselves and introduce their client. Thank you.

10:11 10 MR. FERNICH: Good morning. My name is Mark Fernich.
11 I'm representing, along with my colleague Mark Nemtsev,
12 Mr. Klyushin.

13 THE COURT: All right, now, let me start off, does
14 anyone here know the defendant in this case, Mr. Klyushin? No
15 hands raised. Anyone know either of the two attorneys? Anyone
16 ever been on the opposite side of any case or had been part of
17 a case that involved either of the two attorneys? Okay, you
18 may be seated. Thank you very much.

19 Now I'm going to tell you a little bit about the case.
10:12 20 For those of you who end up as jurors -- can you all hear me,
21 by the way? There are a lot of you in this room. All right,
22 for those of you who end up as jurors in the case, anything I
23 say is not evidence. It's just giving you enough information,
24 just a smidgeon of information so you can see if you can serve
25 in a fair and impartial manner.

1 This case involves charges that Mr. Klyushin allegedly
2 hacked into American computer systems and used confidential
3 information to make profitable trades in the shares of public
4 companies. He has pleaded "not guilty," and, of course, he
5 starts off with the presumption of innocence. Does anybody
6 know anything about this case? Maybe three or four people.
7 Has anyone read anything about this case in the press? Five or
8 six or more, maybe a dozen people.

9 This case involves charges of conspiracy to obtain
10:13 10 unauthorized access to computers and to commit wire fraud,
11 securities fraud and securities fraud cases. I'll give you a
12 much more detailed description if you end up on this. Is
13 anyone here aware of any bias or prejudice you may have in this
14 case or this kind of a case? A few people.

15 Has anyone here themselves or any close family members
16 or friends ever been a victim of an alleged hacking? Maybe
17 half a dozen people, all right.

18 Is there anyone here who, either themselves or close
19 family members or friends, has ever been charged with unlawful
10:14 20 hacking? No hands raised, all right.

21 So now what I'm going to do is, I'm going to ask has
22 anyone read anything on social media, Facebook, you know,
23 social media? Anyone read anything about this case on social
24 media? Maybe one person maybe? Anyone here ever communicated
25 about this case with anyone or had anyone communicate with them

1 on social media? No hands raised.

2 I want to go through the very important issues that go
3 on in this case, and I'm going to first read you, and I'm
4 trying to get right now, the witness list. Okay, here it goes.
5 I'm going to read you a list of possible witnesses in this
6 case. Just because I read it doesn't mean that they're going
7 to be witnesses. I'm going to ask you if you know any of them.

8 First, Marc Brawner from an entity called Koll,
9 K-o-l-l. Maxwell Clarke -- well, let me just start there.

10:15 10 Does anyone know Mr. Brawner? Anyone know anyone at Koll? All
11 right, no hands raised.

12 The next one is Maxwell Clarke who works at the
13 Securities and Exchange Commission. Does anyone know
14 Mr. Clarke? Now, listen carefully here: Is there anyone here
15 who either themselves or close family members or friends works
16 at the SEC or the Securities and Exchange Commission? All
17 right, no hands raised. And once again, does anyone here know
18 Mr. Clarke or are close friends with anyone who works at the
19 SEC? All right, no hands raised.

10:16 20 Devon Cutchins from the Markley Group? He's from
21 Los Angeles. Anyone know him? Anyone know Mr. Cutchins? No
22 hands raised.

23 Anyone know Bryan Garabo from Donnelly Financial
24 Services? No hands raised. And I should ask, has anyone here
25 ever worked for the Markley Group or done business with them?

1 How about Donnelly Financial Services, anyone? No hands
2 raised.

3 All right, so I'm going to go through them. Daron
4 Hartvigson from Stone Turn, anyone know him? No hands raised.
5 Anyone know David Hitchcock who works for the FBI? Anyone know
6 Mr. Hitchcock? Anyone know, either themselves or close family
7 members or friends, anyone who works for the FBI? All right,
8 no hands raised.

9 Mr. Han from Donnelly Financial Services, does anyone
10:17 10 know him? Vince Kenny from the FBI, anyone know him? No hands
11 raised to any of these. Jason Lewis from Donnelly Financial
12 Services? No hands raised. Florian Moschner from Web2Objects,
13 anyone know? Benjamin Oliver from Toppan Merrill? Julie Soma
14 from Donnelly Financial Services? Eric Uitto from the FBI? No
15 hands raised. Jacob Wall from StackPath? Karyn Yanochko from
16 the U.S. Attorney's Office?

17 And, once again, is there anyone here who knows anyone
18 who is working at the U.S. Attorney's Office in Boston? No
19 hands raised.

10:18 20 Jeffrey Zorek from Saxo Bank? David Tawil from Ocean,
21 New Jersey? J. Michael Robert from Corvus Forensic? Michael
22 Cullan from Brooklyn, New York. Justin Baciao from Phoenix,
23 Arizona? No hands raised for any of those.

24 All right, thank you.

25 Now, sometimes what happens is, I've read you all

1 these, and you didn't recognize the name, and you see the
2 person on the stand and you say, "I know that person. I went
3 to school with that person," or whatever. Make sure you tell
4 me if you recognize the person, even if you didn't raise your
5 hand, because we need to know if you know any of the people
6 involved in the trial.

7 Now, I'm going to go through a series of questions
8 designed to make sure you can serve in a fair and impartial
9 manner. So does anyone have any business or financial dealings
10:19 10 with any of the companies I mentioned? No hands raised.

11 Is there anyone here who has been a juror in another
12 criminal case and does not feel that they can be fair and
13 impartial here? No hands raised.

14 Is there anyone here who would believe the testimony
15 of a law enforcement officer over that of a layperson just
16 because the person was a law enforcement officer? By that, I
17 include the SEC, the FBI, any member of the U.S. Attorney's
18 Office. Is there anyone here who would believe the testimony
19 of a law enforcement officer over that of a layperson simply
10:20 20 because the person is a law enforcement officer? Maybe one or
21 two people. All right, thank you. Remember that you've
22 answered that.

23 Is there anyone here who would not believe the
24 testimony of a law enforcement officer, either from the FBI,
25 SEC, or the other places I mentioned, simply because they're a

1 law enforcement officer? A couple of people. Okay, thank you.

2 Is there anyone here who is aware of any bias or
3 prejudice you might have in this case or this kind of a case?
4 Several people, all right.

5 Mr. Klyushin is a citizen of Russia. Is there
6 anything about his national origin that would interfere with
7 your ability to be fair and impartial in this case? Several
8 people.

9 Has anyone here ever been investigated by any members
10 of those -- either you yourself or a close family member or
11 friend or a business that you were closely involved with,
12 investigated by the FBI or the SEC? All right.

13 Does anyone have any religious, ethical, moral or
14 philosophical beliefs that would make it difficult for you to
15 render judgment in the case? Maybe one person.

16 You're going to hear about Mr. Klyushin's company
17 which has contracted to provide certain services in Russia. Is
18 there anyone who would not be able to sit fairly and impartially
19 in this case? The name of the company is M-13. Is anyone
10:22 20 familiar with that company?

21 As I mentioned, I asked you before whether any of you
22 have heard anything about the case, either in the social media
23 or the press, and a few of you have raised your hand. Is there
24 anyone here who would be willing to follow my instruction, if
25 you become a juror, not to read anything in the press about

1 this case?

2 All right, in this case, as in every case,
3 Mr. Klyushin is presumed innocent. That's a constitutional
4 right. Is there anyone who could not follow that basic
5 constitutional principle?

6 The government always bears the burden of proof beyond
7 a reasonable doubt and it never shifts to the defendant.
8 That's an important constitutional principle. Is there anyone
9 here who could not follow that? All right, thank you.

10:23 10 Now, at this point let me just talk to you about the
11 length of this trial. At least right now, we are expecting
12 that this trial will go approximately three weeks, mostly half
13 days. If we get behind at all, and sometimes we get behind,
14 there's a snowstorm -- we've had no snow this year, it's
15 unbelievable, but, anyway, we could, right? It's still winter.
16 Sometimes we get behind because there's a snowstorm, or
17 sometimes somebody gets sick, or there's a delay for some
18 reason or another. This case we're expecting will finish
19 before February school vacation, before President's weekend.
10:24 20 So those of you who have a great ski trip or those of you who
21 have a wonderful vacation down South, we're pretty sure we're
22 going to work to have this case done by February 17. And we in
23 general will be sitting from 9:00 until 1:00, except today we
24 may go a full day till 4:00, and on the day or days you're
25 deliberating we'll go until 4:00. And if we have to -- I'll

1 give you plenty of heads-up notice -- we may have to go a
2 little later into the afternoon. But mostly we like to go 9:00
3 to 1:00 so you can pick up your kids from school, and also get
4 work done in the afternoon on other cases. So most of the time
5 it's going to be 9:00 to 1:00, short of Murphy's law.

6 So let me tell you the parameters of how I excuse
7 people. First, if you are the parent, mother or father, of a
8 small child and there is no childcare available for that child,
9 then I will excuse you. I don't mean the nanny. I don't mean
10:25 10 a daycare provider. If you are the parent or legal guardian of
11 a preschool child and there's no childcare available, I will
12 excuse you.

13 Two, if you are sick, please leave. Tell me about it,
14 but I'm hoping they were screening for that downstairs. And we
15 don't require masks anymore, although I notice a few of you
16 wearing them. You're certainly welcome to wear the masks, but
17 essentially the rule of the road will be that if anyone has --
18 of course, if they have COVID, we'll excuse them, but also if
19 you're exposed to someone who's had COVID, please let me know.
10:26 20 So I will excuse you if you are sick or you've been exposed to
21 someone who has COVID.

22 Third, I will not excuse for mere business
23 inconvenience. I will not. It's inconvenient for everybody,
24 but it is a very, very important constitutional right. It's
25 one of the very few rights that's mentioned not only in the

1 main body of the United States Constitution but in the Bill of
2 Rights. This is a right not only for Mr. Klyushin to have a
3 fair and impartial jury, but it's your right to sit on a jury.
4 It's one of our most cherished rights. So I will not excuse
5 for mere business inconvenience.

6 I have a heart, so if you have those plane tickets to
7 the Caribbean, I'll let you put off your jury duty, but I won't
8 totally excuse you. But if it's just a business meeting or
9 something like that, I will not excuse you.

10:27 10 So given those parameters, for how many people will
11 this be a substantial hardship? I knew, I always get the most
12 hands up on that one. All right, well, I'll see people on that
13 one.

14 And at this point, I also want to discuss the fact
15 that I expect people to be here at 9:00. We will take a break
16 at 11:00, and usually I'll provide food. And today we will
17 provide lunch for you all, for those who stay, because we're
18 going to hopefully -- hopefully do opening statements.

19 So let me ask, is there anything else that I think has
10:28 20 been -- I've been going through everybody's questions. Is
21 there something I missed from anybody's point of view on the
22 questions? They all, you know, sent me questions they'd like
23 asked. Is there anything else anybody would like? And, of
24 course, we have some follow-on approaches.

25 Okay, not hearing anything, all right, what I'm going

1 to do is -- I will get to everyone, I promise you -- we'll go
2 first row, second row. Maryellen will organize it, Maryellen
3 Molloy. If I excuse you, you go back down to the jury room
4 with your card, all right? And if I don't excuse you, you need
5 to stay here in the room because there are some other things I
6 need to ask you about.

7 (Discussion between the Court and Clerk.)

8 THE COURT: And I remind you your answers are under
9 oath, and they're being transcribed by our court reporter.

10:29 10 (Jury voir dire, 10:30-12:20 a.m.)

11 THE COURT: So what we'll do is swear in the jury, and
12 then we'll take a break. Okay, all right. I'm going to ask
13 you both publicly whether you're satisfied. That's my
14 practice.

15 MR. KOSTO: Yes.

16 THE CLERK: Judge, should we collect the
17 questionnaires?

18 (Discussion off the record.)

19 THE COURT: Is the government satisfied?

12:18 20 MR. FRANK: We're satisfied, your Honor.

21 THE COURT: Is the defense satisfied.

22 MR. FERNICH: Yes, Judge.

23 THE COURT: You are our jury. So I'm going to ask
24 Ms. Molloy to please swear you in.

25 THE CLERK: Will each of you all stand and then raise

1 your right hand.

2 (Jury duly sworn.)

3 THE COURT: Thank you. You're our jury. To the rest
4 of you, thank you very much for coming in. We'll be collecting
5 those questionnaires, and I'll catch you in the next round.

6 THE CLERK: So all need to go back downstairs to the
7 second floor to sign out through the jury coordinator.

8 THE COURT: Thank you very much. Happy New Year to
9 everyone. Thank you.

12:20 10 (Jury pool dismissed.)

11 THE COURT: So it's been a really long morning. We'll
12 take a quick break right now. There might be coffee and
13 muffins or something, and we've also ordered lunch for you, so
14 we'll have a brief break, and Maryellen will speak to you, and
15 we'll come back in here for preliminary jury instructions.
16 Hopefully we have time to do the first opening, but if not,
17 we'll have lunch and then go back and do openings this
18 afternoon. Thank you. We'll stand in recess.

19 THE CLERK: All rise for the jury.

12:20 20 THE COURT: Anyone leave any stuff back there?

21 Actually, can I just have one thing on the record, Lee, please.
22 You don't know anything yet, so don't talk about the case.
23 Talk about the Celtics, talk about anything you want, but don't
24 talk about this case, all right, thank you.

25 (Jury dismissed, 12:21 p.m.)

1 (A recess was taken, 12:23 p.m.)

2 (Resumed, 12:54 p.m.)

3 THE COURT: So good afternoon. That went very
4 smoothly, except one thing: They just got lunch. So I'm sort
5 of thinking -- and I know a lot of people are here waiting --
6 that what we would do is just come back in half an hour and go
7 straight through the jury instructions and openings so that you
8 all can grab lunch, because otherwise they're not ready yet, so
9 they come back in 20 minutes and we break again, you haven't
10 eaten lunch. I know a bunch of people are waiting on your
11 every word, but I'm thinking what we'll do is come back here
12 around, what do you think 1:20? Give people about a half an
13 hour to come back, and we'll just go straight through my jury
14 instructions into the openings so everything is in one smooth
15 flow. So that's our best bet. I think we're the only ones
16 impanelling today, so you should all be able to get lunch, and
17 we'll come back at 1:20 and go into openings.

18 (Discussion between the Court and Clerk.)

19 THE COURT: One of the court officers may take one of
12:55 20 the jurors out for a cigarette, and while we're at it, are
21 there anybody showing PowerPoints?

22 MR. NEMTSEV: We are.

23 THE COURT: Have you shown each other?

24 MR. NEMTSEV: No, not yet.

25 THE COURT: Well, you need to do that right now.

1 Okay, thank you.

2 THE CLERK: So we'll see everyone back about 1:20.

3 (Noon recess, 12:55 p.m.).

4 (Resumed, 1:30 p.m.

5 THE CLERK: All rise. United States District Court is
6 now in session.

7 THE COURT: What's the issue?

8 MR. FRANK: Your Honor, there are a couple of slides
9 in the defense PowerPoint that are self-serving hearsay
01:31 10 statements of the defendant or his co-conspirators. We don't
11 believe --

12 THE COURT: Let me see them. What are the issues?

13 MR. FERNICH: Judge, this is from the Threema chat
14 that we discussed extensively.

15 THE COURT: Well, these are from the thing that's
16 being marked.

17 MR. FRANK: Correct, but it's not coming in. It's
18 being marked for identification and then --

19 THE COURT: I thought you were agreeing to bring it --
01:31 20 to allow it to come in.

21 MR. NEMTSEV: We are, other than portions that are
22 403.

23 MR. FRANK: Oh. If they're allowing the whole thing
24 to come in, then that's fine.

25 THE COURT: Okay, good. Issue gone. Let's get this

1 jury. Let's get the show on the road.

2 THE CLERK: All rise for the jury.

3 (Jury enters.)

4 THE COURT: You may all be seated. Welcome. You're
5 now our jury. I hope you enjoyed your lunch. We're about to
6 go, and we're going to have the preliminary jury instructions
7 and then the opening statement.

8 The preliminary instructions are not a substitute for
9 the closing instructions of law. I'll give you a lengthy set
01:34 10 of instructions at the close of the case. Rather, this is a
11 brief introduction, shall we say a roadmap as to what to expect
12 over the course of the next few weeks. Let me say that, as you
13 know by now, you're the jury and you're sworn to be fair and
14 impartial, and your job will be to decide what the facts are.
15 You and you alone decide what the facts are. Nothing I say or
16 do is in any way intended to invade your unique and special
17 responsibility to determine what the facts are, what the truth
18 is, and to render a verdict at the end.

19 Nothing that the attorneys say can in any way invade
01:35 20 your responsibility for finding what the facts are.

21 So how are you going to decide what the facts are?
22 You decide what the facts are based on the evidence. Evidence,
23 you'll hear sworn testimony of witnesses; you'll receive many
24 exhibits; and you'll be able to evaluate certain stipulations,
25 but, essentially, you decide the facts from the evidence in the

1 case. But there are many things that happen over the course of
2 a trial that do not involve evidence. You're about to hear
3 opening statements. You all have notebooks there. Please, if
4 you decide to take notes, your decision, please mark them as
5 opening statements, because opening statements are not
6 evidence. Rather, they're what the attorneys expect might be
7 introduced as evidence. But if it doesn't come in at the end,
8 you cannot consider what's in the opening statements.

9 Questions by lawyers are not evidence. So it was
01:36 10 raining out that day, wasn't it? You shouldn't assume that
11 because the lawyer asked the question, it was raining. Maybe
12 it was. Maybe it wasn't. It's the answer of the witness that
13 is the evidence, not the question by the attorney. Objections
14 are not evidence. "Objection, Your Honor, hearsay." You've
15 all heard that term, right, watching too many TV shows?
16 "Hearsay," "Leading," "Irrelevant," you've heard all these
17 terms. And sometimes I'll just rule off the bench. I'll say
18 "Sustained," which means I agree with that objection; or
19 "Overruled," I disagree with it. But the objections are not
01:37 20 evidence in any way.

21 We try and work these out before you come in in the
22 morning, but sometimes I need to go to sidebar. If I do,
23 please don't try and listen. You have an invitation to stand
24 and stretch, you know, stretch your back, touch your toes,
25 whatever you want to do, but please don't try and listen.

1 Sometimes -- we're very inconsistent about this -- if we think
2 we're getting too noisy, I might turn on white noise. Some
3 judges do jazz. I haven't gone that far yet. But please don't
4 try to listen to whatever we're doing at sidebar.

5 You will also hear at the end closing arguments, which
6 are also not evidence in the case, and you will hear my
7 instructions of law, which will be quite detailed at the end.
8 So that is basically -- those things are not evidence. The
9 only things that are evidence are people testifying under oath,
01:37 10 exhibits that are marked and come to you in the jury room.
11 Sometimes I'll put a limitation as to what you can consider
12 evidence for. For example, sometimes you can consider
13 someone's state of mind, but it's otherwise hearsay. So if I
14 have a limitation on it and you're taking notes, just put a
15 little L there so you can remember that that was limited in the
16 use to which you can put it.

17 Now, I want to talk about the difference between
18 direct and circumstantial evidence. You've probably heard
19 those terms. Direct evidence is direct proof from someone who
01:38 20 has perceived an event with one of his or her five senses.
21 You've seen something. The witness has seen something and
22 tells you about it. Smell, touch. They perceive something and
23 tell you about it, and it's your job to decide whether or not
24 they perceived it correctly. Maybe the person wasn't wearing
25 their eyeglasses. Maybe somebody was having a bad day and

1 wasn't remembering it correctly. But direct evidence is
2 someone perceived something and tells you about it.

3 Circumstantial evidence is different. Circumstantial
4 evidence is proof of facts from which you may reasonably infer
5 or conclude that other facts exist. So, for example -- let's
6 use an old-fashioned example -- the letter carrier. If your
7 daughter sees the letter carrier deliver the mail to the house,
8 she's seen something. She tells you, and you have to decide
9 whether to believe her or not. What if no one saw the letter
01:39 10 carrier deliver the mail, you come home and there's mail in
11 your mailbox or through your mail slot? That's circumstantial
12 evidence that the letter carrier had been there. How else
13 would the mail get into your mailbox? Now, that said, it may
14 be the regular letter carrier, or it could be that person was
15 sick or on vacation. So it's your job as the jury to find out
16 not only what the facts are, but what are the reasonable
17 inferences that you can draw from the facts?

18 So I'm going to go through the fact that this is a
19 constitutional case with -- I asked you about those when we
01:40 20 were doing the impanelment. It has very important
21 constitutional rights implicated, so I want to remind you of
22 your oath to follow those. So let me talk to you about them
23 right now.

24 A defendant is presumed innocent unless and until
25 proven guilty. You'll hear about an indictment. That means

1 nothing other than it's a written charge. Everyone has a right
2 to know in writing what the charge is. The indictment brought
3 by the government against the defendant is only an accusation.
4 Nothing more. It is not proof of guilt or anything else. The
5 defendant, Mr. Klyushin, starts off with a clean slate.

6 Second, the burden of proof is on the government until
7 the very end of the case. Mr. Klyushin has no burden at all.
8 He has no burden to prove his innocence or to present any
9 evidence or to testify.

01:40 10 Third, the government must prove the defendant's guilt
11 beyond a reasonable doubt. I'll give you instructions about
12 that extremely high burden of proof at the end of the case.

13 Now, how is this case going to go forward? How are we
14 going to do it? First, you're going to hear the opening
15 statements. That's all you'll hear today. Each of them should
16 take no more than an hour. You'll go home. Then we'll start
17 with witnesses tomorrow. The government goes with its
18 witnesses, direct, cross, redirect, recross, next witness. I
19 very rarely let it go beyond direct, cross, redirect, recross.

01:41 20 Every once in a while something surprises me and I do, but it's
21 really -- pretty much, that's how it will go. At the end of
22 the government's case, you'll hear the government say, "The
23 government rests." Remember, the defendant doesn't have to put
24 on any evidence at all. At the end of all of the evidence,
25 we'll have the closing arguments and then the instructions of

1 law.

2 Now, there are certain things that I want to talk to
3 you about in terms of your conduct as jurors, which is
4 critically important. First, there has been some press
5 coverage, as you know by now, about this case. And there may
6 well be press coverage going forward. So no one here should
7 read anything in the paper about this case. No one should be
8 discussing this case on social media. No one should be looking
9 for anything about this case on social media. No one should be
01:42 10 talking to anyone about this case on social media or anyplace
11 else, because if you were, you jeopardize the trial. It's
12 critical -- you're the ones who all swore to me you could be
13 fair and impartial. We just went through this whole long
14 process. So you cannot look at anything in the press or
15 communicate in any way, either in snail mail or social media or
16 in any way, about this case.

17 Now, here's the part that seems -- when you go home,
18 you know what's going to happen just because people are people,
19 right? They're going to say, Wow, you were impaneled on a
01:43 20 jury. What's it about? Or, Oh, I'm so sorry you're stuck
21 there for three weeks. Whatever it is, you just have to say,
22 The judge told me I cannot talk about the case. All right? So
23 no discussions of the case. Blame me. It's okay.

24 But you can't even talk about it with one another.
25 And the reason is we don't want three people deciding after the

1 first witness and four people after the next witness. By the
2 time I send this out to you to deliberate, you will have heard
3 all of the evidence and all of the instructions of law, and
4 then you can talk to your heart's content. So as I said
5 before, talk about the cold weather we're about to get or
6 sports or Valentine's Day, whatever you want, but not about
7 this case when you're back in the jury room.

8 Every day we will come in at around -- hopefully at
9 9:00. You've heard rumors about the traffic in the Seaport.
01:44 10 They're understated. Traffic is terrible. So if you're
11 driving in, please give yourself that extra period of time.
12 And I'm about to instruct you to do something that I'm sure the
13 traffic police won't love me to say. If you're stuck in a
14 major traffic jam, call MaryEllen on the number she gives you.
15 Because otherwise, we're all sitting here. We don't know where
16 you are. We don't know if someone's sick. We don't know if
17 you have a flat tire. And by the way, that's happened. So you
18 need to call us if there's going to be a major delay, and let
19 us know where you are. Maybe we'll just order coffee if we're
01:44 20 stuck here for an extra 15 or 20 minutes or something like
21 that, but let us know what's going on if you're going to be
22 late.

23 For that matter, in terms of -- I do want to discuss
24 for a minute sickness. There was about a year there where we
25 weren't hearing cases at all because of COVID. And then we

1 were hearing cases -- you won't believe me, I was, like,
2 encased in plexiglass, and everybody was wearing a mask. All
3 that has been suspended. You are welcome to wear a mask if you
4 want to wear a mask. We do not require that people be
5 vaccinated, and so -- and I know that's a smallish room there.
6 So if you want to wear a mask, wear a mask. You don't want to
7 wear one, you don't have to wear one.

8 But the one thing I will require is, if you get up in
9 the morning and you feel sick, you know, not -- sick as in
01:45 10 COVID-type sick, call us. We don't want you to come in and
11 possibly infect the whole jury. If you have one of those rapid
12 tests, that would be terrific. So you can figure out if --
13 maybe you should all just stock up on them. And if you don't
14 have COVID, well, then -- if you have a cold, I mean, join the
15 rest of the world. But if it's COVID, we can't take that risk
16 for anybody here, so don't come in. Call us and let us know.

17 The harder call is if you're exposed to someone with
18 COVID, I would ask you to come in and wear a mask in case you
19 get it. And I don't mean, you know, you're just in a room or
01:46 20 at the grocery store or something. We all know, you know, when
21 my husband got COVID, I got it. If you're closely exposed to
22 someone who has COVID, please don't come in, or at the very
23 least, if it's not quite so close, wear a mask. Use your
24 judgment on the whole thing.

25 I'm asking you not to speak to anyone in this

1 courtroom. You're going to feel like, you know, wow, we're
2 going to be two to three weeks together, right? You're going
3 to feel like you know everybody, right? But as soon as you're
4 down in the cafeteria line and as soon as you're down there by
5 the bus stop and you start talking to someone, the other side
6 sees it and they come dashing up to me and say, I saw a juror
7 talk to a lawyer. So the instruction is be rude. Do not talk
8 to them. They know they're not supposed to talk to you. Do
9 not discuss the case in any -- well, you're not supposed to
01:47 10 anyway. But, certainly, you don't know who the witnesses are
11 or who they aren't. You don't know. Don't discuss the case.
12 It's just that simple.

13 Let me make sure I haven't -- no one should in any
14 way, as I said, go on social media, but also no one should in
15 any way try and find the docket in this case, the court filing.
16 I'll let you know when you need to know something.

17 Nobody should do any independent research on the case.
18 If you don't understand a term, you have a notebook, send it up
19 to me. There will be some technical terms, whether it's a
01:47 20 statistical concept or a financial concept. If you don't
21 understand a term, ask me a question, I don't understand what X
22 means. However, it's their job to present things. I don't
23 allow you to ask questions of the witnesses. But if there's
24 something you don't understand, don't look it up by yourself.
25 Ask me about it, and I'll have the attorneys explain it better

1 for all of you.

2 And I was just going to encourage you to take notes.
3 You all have a notebook. You do not get a transcript. We have
4 fabulous court reporters, but you do not get a transcript at
5 the end of the case automatically. We can produce them, and I
6 have produced them, but it takes a while because it's not like
7 an ATM machine when you press a button and out comes a
8 transcript. You have to have it certified, you have to have it
9 checked. So you don't want to be back there waiting for 24
01:49 10 hours while you're getting a transcript. So I encourage you to
11 take notes. At the very least, take down what's the name of
12 the witness, when did they testify, and put down -- jot down a
13 few notes like dates or something like that just to jog your
14 memory when you go into that deliberation room.

15 So at this point, what I think we're going to do is
16 we're going to -- I think that's -- I think that's about it.
17 My job is over. It's their turn. So at this point, we're
18 going to start with the government, which should go about an
19 hour. We'll have you out of here by 4:00. You may -- you know
01:49 20 what, we're going to switch court reporters, probably, so there
21 might be a brief hiatus where we'll stand and stretch. And if
22 the defense chooses, because don't forget, the defense doesn't
23 have to do anything, the defense will have an opportunity to do
24 an opening. Okay? Thank you.

25 MR. FRANK: Thank you, Your Honor. If I could ask the

1 jurors to put their screens down so that they can follow along.

2 THE COURT: So you're going to be putting things on
3 the screens?

4 MR. FRANK: Yes, Your Honor.

5 THE COURT: All right. They look like airline tray
6 tables. Probably Mary Ellen's most frustrating aspect of her
7 job is tech. Are they all on? Is anyone's off?

8 MR. FRANK: It should say "Government's Opening
9 Statement."

01:50 10 THE COURT: Are yours good?

11 Could you switch that around so that the public can
12 see whatever's -- I want to make sure everyone can see. This
13 is a public trial.

14 Can you all see so you can follow along? Great.
15 Perfect. Okay. Everybody's working?

16 MR. FRANK: Thank you, Your Honor.

17 Between 2018 and 2020, that man, the defendant,
18 Vladislav Klyushin, and his associates, made close to 90
19 million dollars trading stocks. It wasn't luck. And it wasn't
01:51 20 because of careful financial research either. The defendant
21 cheated. He had access to confidential information about the
22 financial performance of the companies he traded in, secret
23 information that the public did not yet know, information that
24 would affect the company's stock prices when it came out. The
25 defendant had tomorrow's news, tomorrow's headlines today. And

1 he exploited it for tens of millions of dollars in profit.

2 Where did the defendant and his associates get that
3 inside information? The evidence will show they stole it.
4 From their headquarters in Moscow, Russia, they hacked into
5 protected computer systems right here in the United States, and
6 they downloaded the information that was stored there. And
7 then they used that confidential information to make money.

8 Hacking into computers is a crime. So is stealing the
9 information from those computers. Trading stocks based on
01:52 10 what's called material non-public information, secret
11 information that can move a stock's price, that's also a crime.
12 It's called securities fraud. And it's those crimes that bring
13 us here today.

14 Good afternoon, again, ladies and gentlemen. My name
15 is Stephen Frank, and I'm an Assistant United States Attorney
16 here in Boston. With me at counsel table is my colleague
17 Assistant United States Attorney Seth Kosto and Paralegal
18 Jennifer Lewis. Together, we represent the United States. Our
19 job is to present to you the evidence that proves beyond a
01:53 20 reasonable doubt that the defendant did exactly what he is
21 charged with doing, scheming with others to hack into protected
22 computer networks, to steal confidential information from those
23 computers, and to use that information to cheat the stock
24 market and to violate the federal fraud and conspiracy laws in
25 the process.

1 The defendant is the owner of a company based in
2 Moscow called M-13. This is the company's website. You will
3 learn that M-13 is a technology company and it offers a number
4 of different services. One of those services is helping its
5 clients monitor the news media and postings in social media.
6 You can see from its website -- this is the English language
7 version of its website -- M-13 sells those monitoring services
8 to clients, including both private companies and the Russian
9 government. It also offers cyber security services, helping
01:54 10 companies protect against computer hacking. On its website,
11 M-13 advertises that it can help companies protect against the
12 theft of confidential information.

13 Here's how the defendant's company describes what it
14 does: Our experts imitate a full-scale targeted attack during
15 which the attacker, while trying to conceal his presence, uses
16 a wide range of actions against the organization's
17 infrastructure.

18 And here's a proposal that the defendant himself sent
19 one of his clients describing how his experts would do just
01:55 20 that. They would exploit vulnerabilities in their targets'
21 computer systems. They would obtain credentials from people
22 who were authorized to be on those computer networks. They
23 would use those stolen credentials to gain unauthorized access
24 to the systems, to break in. And once inside, they would
25 identify sensitive data stored on those networks.

1 But the evidence will show that the defendant and his
2 associates didn't just imitate hackers to test their clients'
3 network security. They weaponized those very same techniques
4 to engage in real hacking, to break into the computer networks
5 of U.S. corporations and steal their confidential information
6 so that the defendant and his associates could trade on it to
7 the tune of tens of millions of dollars in profits.

8 And although you won't see evidence in this case that
9 the defendant himself invented this hack-to-trade scheme, the
01:56 10 evidence will show that he professionalized it. He brought
11 money and investors to the scheme. He put his company's
12 resources behind it. He even used M-13 as a cover to deflect
13 suspicion when one of the brokerage firms he used started
14 asking questions about his unusually profitable trading.

15 And the evidence will show that the defendant
16 personally made more money from this scheme than almost anyone
17 else.

18 Here's how the scheme worked. Using sophisticated
19 techniques, the hackers secretly gained access to the computer
01:57 20 networks of two American companies. One of those companies is
21 called Donnelly Financial, or DFIN for short, and the other is
22 called Toppan Merrill, or TM. Those two companies, TM and
23 DFIN, are what's called filing agents. They help other
24 publicly-traded companies, companies whose stock trades on the
25 New York Stock Exchange or the NASDAQ Stock Market, file

1 financial reports with the SEC. That's the Securities and
2 Exchange Commission. As you'll learn, the SEC is a U.S.
3 government agency whose mission is to protect investors by
4 maintaining fair and honest securities markets, including by
5 monitoring trading in those markets. And as you will also
6 learn, the SEC requires companies that are publicly traded in
7 the United States to file financial reports four times a year.
8 In those quarterly reports, the companies disclose how much
9 money they made or lost over the last three months. And they
01:58 10 provide other financial information as well.

11 As you'll learn, and as your common sense probably
12 already tells you, that kind of information can be
13 exceptionally valuable to investors, because if a company
14 announces that it's doing well financially, its stock price
15 will typically go up, particularly if the market isn't
16 expecting that news. Similarly, if a company is not doing as
17 well as the market expects, its stock price will typically go
18 down. And as your common sense probably also tells you, if
19 someone has a sneak peek at that information, if they know it
01:59 20 before other investors know it, that can give them a huge leg
21 up when buying and selling stocks. And that's why trading on
22 that kind of inside information is against the law, because it
23 gives the trader an unfair advantage over everybody else, over
24 all of the other investors who buy and sell shares without
25 knowing what's about to happen. It's cheating. And the

1 evidence will show that is exactly what happened here.

2 Once inside DFIN's and TM's computer networks, the
3 hackers were able to view and download the confidential
4 financial reports of hundreds of companies before those reports
5 were filed with the SEC and disclosed to the public. All sorts
6 of companies in all sorts of different industries, big
7 companies and small companies, companies you've probably heard
8 of, and some you may not have. Microsoft, Roku, SS&C
9 Technologies, Capstead Mortgage, Kohl's, Tesla, Ulta Beauty,
02:00 10 Skechers, Sprouts Farmers Market, and many, many more. With
11 those secret financial reports in hand, the hackers knew before
12 anyone else knew which companies would surprise the market by
13 reporting better-than-expected earnings and which would
14 surprise it by reporting worse-than-expected earnings, whose
15 sales would be stronger than expected and whose would be
16 weaker, what kind of guidance they planned to offer investors
17 about their future financial performance, and other information
18 as well. Information that, when it was released to the public,
19 could affect the prices of those stocks.

02:01 20 The hackers and their associates exploited that
21 confidential information to their advantage for big money:
22 Buying stocks they knew would surprise the market by reporting
23 blowout results, betting against companies that they knew would
24 fall short, hundreds of times over a period of less than three
25 years.

1 Now, you'll learn that even with the answer key in
2 hand, the defendant and his co-conspirators didn't always make
3 money on every single trade, because sometimes the market
4 reacts to news in unexpected ways. And ironically, in a case
5 where the defendant and his associates made tens of millions of
6 dollars in the stock market, it turns out they weren't the
7 greatest traders because trading wasn't their business. In
8 fact, the evidence will show that when they didn't steal the
9 information they traded on, they typically lost money or made
02:02 10 very little money in their trading. And even when they did
11 steal earnings information, they didn't always understand it.
12 On occasion, they made mistakes, including sometimes by trading
13 in the wrong direction.

14 But on the whole, their hacking and trading scheme was
15 incredibly profitable, generating the kinds of returns that
16 actual money managers couldn't even dream about. The evidence
17 will show that in just over two and a half years, the defendant
18 personally turned a 2-million-dollar investment into nearly 21
19 million dollars, a return of nearly 900 percent. Together, he
02:03 20 and his associates turned about 9 million dollars into about 90
21 million dollars. Now, by comparison, you'll learn that the
22 stock market returned only about 25 percent over that same
23 period.

24 So who were the defendant's associates? One of them
25 was this man, Nikolai Rumiantcev. He's in the front row with

1 the defendant behind him and to the right. Rumiantcev was a
2 high-level employee of the defendant's company, M-13. He
3 handled trading for the defendant and the defendant's
4 investors, and he traded for his own benefit as well.

5 Another was this man, Ivan Ermakov, one of the
6 defendant's close friends. Here they are together in a selfie
7 taken at the World Cup. The evidence will show that Ermakov
8 didn't trade under his own name, but along with Rumiantcev, he
9 handled trading in the defendant's accounts, and he was a
02:04 10 hacker. In 2020, Ermakov went to work for the defendant's
11 company, M-13, as an employee. Here you can see him taking a
12 nap with an M-13 sticker on his jacket. But the evidence will
13 show that he and the defendant were close well before then.
14 Here are some photos and videos of Ermakov that you will learn
15 the defendant saved in his own iCloud account. Here they are
16 together on a trip in April 2018, helicopter skiing. And
17 here's Ermakov at the top of the mountain. Here's a video the
18 defendant saved of Ermakov golfing.

19 (Video played.)

02:05 20 And another celebrating his birthday.

21 (Video played.)

22 You will learn that the defendant even bought Ermakov
23 an apartment to live in, and they had matching cars with
24 matching license plates with the number 13 on them, just like
25 the name of the defendant's company, M-13.

1 The defendant, Ermakov, and Rumiantcev also put other
2 people's money to work in the hack-to-trade scheme. Here's one
3 of those investors, a man named Sergey Uryadov, with the
4 defendant and Ermakov. And here's the defendant with two other
5 investors, Alexander Sasha Borodaev on the right and Boris
6 Varshavskiy on the left. The evidence will show that the
7 defendant made millions of dollars for these investors through
8 hacking and trading in exchange for a cut of up to 60 percent
9 of the proceeds. That's right. For every dollar he made for
02:06 10 them, he took 60 cents for himself. And you will learn that
11 there were other participants in the scheme as well.

12 So how did the scheme unravel? You will learn that in
13 late 2019, agents at the FBI received information from the SEC
14 about suspicious trading in the brokerage accounts of several
15 Russian nationals. The trading was timed to quarterly earnings
16 announcements. It was highly profitable, and it was in
17 multiple companies. As the agents investigated, they learned
18 that even though the companies that the group was trading were
19 in different businesses, they all had one thing in common.
02:07 20 They used either TM or DFIN, the two filing agents I mentioned
21 just a moment ago, to file their earnings reports with the SEC.

22 And when the agents reached out to those two
23 companies, that prompted a discovery in early 2020. TM and
24 DFIN had been hacked.

25 Now, you'll learn that precisely because earnings

1 information is so sensitive, TM and DFIN store it in protected
2 computer systems. Until they file those reports with the SEC
3 and release them to the public, the information is kept
4 strictly confidential. People who work for TM and DFIN need
5 passwords to access it. And, of course, they're not allowed to
6 trade on it.

7 You will learn that when TM looked into the situation,
8 it discovered that someone had planted malware on the company's
9 computer network. That's a malicious computer program designed
02:08 10 to collect employees' usernames and passwords. Similarly, DFIN
11 discovered that hackers had gained access to the place on its
12 network where usernames and passwords were stored. And both
13 companies found that, using stolen employee credentials,
14 hackers had entered their networks again and again to view and
15 download their clients' earnings reports before those reports
16 were filed with the SEC, before the news was made public.

17 They also discovered that the hackers had taken care
18 to cover their tracks. The access came from Internet addresses
19 called IP addresses that TM and DFIN didn't recognize. You
02:08 20 will learn that IP addresses are a lot like phone numbers for
21 every computer on the Internet. The hackers had rented those
22 Internet locations from companies called VPNs, virtual private
23 networks, which allow users to hide their own Internet
24 addresses by routing their Internet use through the VPN's
25 computers. That way, neither TM nor DFIN would be able to see

1 where the unauthorized access was coming from.

2 You'll learn that the computer networks at DFIN and TM
3 were set up to keep track of every time a user logged in and
4 what the user did on the company's network. It turned out, TM
5 only kept detailed logs that only went back a few months. But
6 DFIN's logs were more detailed, and they went back further.
7 And when they checked those logs, DFIN's security consultants
8 found evidence that the hackers had been poking around its
9 systems and stealing its clients' confidential information
02:10 10 since at least early 2018. TM wasn't able to trace it back
11 quite as far, but it too found evidence of the hack dating back
12 to late 2018.

13 Here's what else you'll learn. As careful as the
14 hackers were, they left behind digital clues about who they
15 were, clues that the FBI was able to follow so that they could
16 trace the attacks back to their source, back to the defendant
17 and his associates in several different ways.

18 First, TM found malware on its computer network that
19 was programmed to communicate with a series of Internet sites
02:10 20 with domain names that sounded like real businesses but
21 weren't, domain names like www.developingcloud.info and
22 scoreyourmoney.com. The FBI, in turn, was able to trace those
23 domain names to a company called Namecheap where the domain
24 names were registered, and to other companies from which the
25 hackers rented the computers that they used in the attacks.

1 The FBI agents found that the hackers used cryptocurrency,
2 Bitcoin, to pay for those domains. And when the FBI followed
3 the money and traced those Bitcoin transactions, they found a
4 connection to another IP address, which came back to a company
5 in Moscow, Russia. Not just any company, the defendant's
6 company, M-13; an IP address that the evidence will show the
7 defendant himself and Ermakov and Rumiantcev all used
8 regularly.

9 The second way that the FBI was able to trace the
02:12 10 hacks back is this: In January 2020, agents learned that one
11 of the IP addresses that the hackers had used to attack TM had
12 been rented from a company called AirVPN. Agents obtained
13 court authorization to get real-time logs of the traffic to and
14 from that AirVPN IP address. From those logs, they found that
15 on January 29, 2020, that IP address was accessed from an IP
16 address that came back to M-13, the defendant's company, the
17 same IP address that the defendant and Ermakov and Rumiantcev
18 all used. And eventually, the agents learned that the hackers
19 had used other AirVPN IP addresses to attack not just TM but
02:13 20 DFIN as well.

21 And here's the third way that the agents were able to
22 trace the hacks back: They found that on one particular day,
23 May 9, 2018, Ivan Ermakov, the defendant's friend, made a
24 mistake. On that day, Ermakov backed up his own Apple iTunes
25 account from an IP address beginning with the numbers 119. It

1 happened at 12:44 a.m. Pacific Standard Time. You can see the
2 log right there on your screen. That translates to 7:44 a.m.
3 Coordinated Universal Time. You might hear that time zone
4 referred to as Zulu Time. And you can see that IP address,
5 119.204.194.11, right there on your screen. This is an excerpt
6 from DFIN's computer logs from that same day. You can actually
7 see the hack recorded on the log at 7:48 Zulu Time. Four
8 minutes after Ermakov backed up his Apple iTunes account from
9 the 119 IP address, DFIN's logs recorded that the company's
02:14 10 servers were infiltrated from that same 119 IP address using
11 the stolen user ID of a DFIN employee named Julie Soma --
12 those are her login credentials right there, RR52260 -- and to
13 download multiple confidential earnings reports, including, in
14 this particular example, the report of a company that trades on
15 the stock market under the symbol HZNP. Its full name is
16 Horizon Pharmaceuticals.

17 Members of the jury, the evidence will show that on
18 this day, May 9, 2018, the FBI was able to trace the hack right
19 back to the defendant's good friend.

02:15 20 Now, you'll learn that although the defendant himself
21 didn't trade in Horizon Pharmaceuticals stock or the other
22 companies that Ermakov accessed on that day, the agents found
23 that that same stolen user ID belonging to Julie Soma was used,
24 along with a handful of other employee IDs, to gain access to
25 DFIN's computer servers over and over and over again. And on a

1 few occasions, in the fall of 2018, those attacks were routed
2 through a VPN computer housed in a data center located right
3 here in Boston. In fact, it's just a few blocks from this
4 courthouse.

5 From that Boston computer server, the hackers used
6 Julie Soma's stolen ID to download the confidential earnings
7 reports of companies like Tesla, the electric car company, and
8 Capstead Mortgage, a real estate company, and the defendant did
9 trade in those stocks, in accounts in his own name and in the
02:16 10 name of his company, M-13, trading that you will learn was yet
11 another way that the FBI was able to tie the defendant and his
12 associates to this hack-to-trade scheme.

13 For example, you will see from DFIN's computer logs
14 that on October 22, 2018 Julie Soma's user ID, RR52260, you can
15 see it on the log, was used to download the confidential
16 earnings filing of Capstead Mortgage. You can see the document
17 identified on the screen that's Exhibit 99-1. It happened via
18 a Boston IP address. That's 104.238.37.190 on the log. Just
19 one day later, October 23, 2018, the defendant, who owns an IT
02:17 20 security company in Russia, entered into a financial
21 transaction called a short involving shares of Capstead, a real
22 estate company located in Texas.

23 What's a short? You will learn that it's a financial
24 transaction that allows you to make a profit only if the
25 company's shares go down in value. It's a bet that the

1 company's stock will go down.

2 The defendant placed that trade, those trades, one day
3 before Capstead announced that its earnings had fallen short of
4 Wall Street's estimates, news that, in fact, caused its share
5 price to fall when the rest of the world found out what the
6 defendant already knew.

7 And the evidence will show that the same thing
8 happened again on the morning of October 24, 2018. Julie
9 Soma's stolen user ID RR52260 was used to download the
02:18 10 confidential earnings report of Tesla Motors via another
11 Boston-based IP address beginning with those same numbers 104.
12 Later that same morning, the defendant started buying shares of
13 Tesla, betting that they would go up.

14 And take a look at a WhatsApp message he sent to his
15 friends Varshavski and Borodaev early that same afternoon.
16 This is a graphic we've created to make the message easier to
17 read, showing an English translation from the Russian. When it
18 actually comes into evidence, you'll see it on a spreadsheet,
19 which is how the agents extracted it from the defendant's
02:19 20 iCloud account. Here's what he wrote: Take a look at Tesla's
21 stock now and tomorrow after 16:30 and how much it grows.
22 You'll learn that 16:30 Moscow time is 9:30 a.m. Eastern Time,
23 when the U.S. stock market opens.

24 Hours later Tesla announced blowout earnings results,
25 and when the stock market opened the next day, its shares shot

1 up. Just days later those two men, Varshavskiy and Borodaev,
2 became investors with the defendant.

3 And here's what else you'll learn, when the FBI
4 obtained court authorization to look inside the iCloud account
5 of the defendant's friend, the hacker Ermakov, agents found
6 this: An image from an online brokerage app for Saxo Bank, a
7 brokerage firm based in Denmark. It's like a European version
8 of E-Trade or Charles Schwab. The stock on the screen is of a
9 company called Avnet. The date is January 23, 2020. It's
02:20 10 right there in the lower left-hand corner, written in Russian.
11 And look at this number in the lower left-hand corner. It's an
12 account number. 331453INET. Members of the jury, the evidence
13 will show that that account number found on this screenshot in
14 a brokerage app in the iCloud account of Ivan Ermakov, that
15 account number doesn't belong to Ivan Ermakov. It belongs to
16 the defendant. You can see it on his Saxo Bank brokerage
17 statement right there, 331453INET.

18 On January 23, 2020, the day that that image was saved
19 in Ivan Ermakov's iCloud account, the defendant's Saxo account
02:21 20 again shorted shares of Avnet, a trade that would only be
21 profitable if the company's stock price went down. Two days
22 before that, hackers broke into TM's network from another
23 AirVPN IP address and downloaded Avnet's confidential earnings
24 report, which had not yet been filed with the SEC. The report
25 disclosed that Avnet's earnings per share would be 40 cents,

1 one penny short of what Wall Street analysts were expecting.
2 And here's how the stock reacted when the rest of the world
3 learned that news. It ticked up on the first day, but then it
4 went down, earning the defendant a quick profit of close to
5 \$5,000 on that one trade alone.

6 And the defendant wasn't the only one who traded on
7 that day. So did Nikolay Rumiantcev and an account in the name
8 of M-13. So did Sergey Uryadov, one of the defendant's
9 investors. And so did two other Russian nationals, Igor
02:22 10 Sladkov and Mikhail Irzak. You will learn that those two men
11 were two of the original participants in this hack-to-trade
12 scheme. Here they are sitting at their computers. That's
13 Sladkov taking a selfie and Irzak at the table facing away from
14 the camera. And take a look at this sticker over the laptop
15 camera lens. It has the distinctive red, white and blue logo
16 of the Russian Olympic Committee. We'll come back to that
17 sticker in just a moment.

18 The evidence will show that Sladkov started trading
19 before the defendant but that after the defendant got involved
02:22 20 in the scheme, he and Sladkov and Irzak all traded many of the
21 same stocks in the same direction at just about the same time,
22 and so did Rumiantcev and M-13 and the defendant's investors.
23 In fact they even used the same broker for many of those
24 trades, Saxo Bank. And though neither Sladkov nor Irzak was in
25 direct contact with the defendant, you will learn that they

1 were, in fact, connected through their hacker friend Ivan
2 Ermakov. In fact, Sladkov even had M-13's in-house chat app
3 saved in his iCloud account, the defendant's company's chat
4 app.

5 Here's what else Sladkov had in that iCloud account, a
6 photo of that same computer we just looked at a moment ago.
7 You can see that red, white and blue sticker of the Russian
8 Olympic Committee covering the camera lens at the top of the
9 screen.

02:23 10 On the screen, the quarterly earnings report of a
11 company called Snap. That's the company behind Snapchat. On
12 the right-hand side of the screen is the actual report that the
13 company filed with the SEC. You can see the text on Sladkov's
14 screen and the text of what Snap filed with the SEC are the
15 same. The evidence will show that the photo on the left was
16 taken at 8:13 a.m. Eastern Time on February 6, 2018. Here's
17 the thing: The earnings report, it wasn't filed with the SEC
18 until more than eight hours after that photo was taken, at
19 4:20 p.m. on that same day. You can see the time right there
02:24 20 on the SEC's website. But it was downloaded from DFIN's
21 computer servers one day earlier by someone using the log-in
22 credentials of Julie Soma, the DFIN employee whose credentials
23 had been stolen. You'll see other evidence showing that
24 Sladkov had access to similar confidential documents at least
25 as early as the fall of 2017.

1 Now, the defendant didn't trade in Snap on that
2 particular day in that particular quarter, but the evidence
3 will show that his involvement in the scheme did in fact start
4 a few months later. And once he was in, he was all in,
5 bringing not just his own money to the table but Rumiantcev's
6 money and his investors' money as well.

7 And you will learn that almost every time the
8 defendant and his co-conspirators traded around a company's
9 earnings announcement, that earnings report was filed with the
02:25 10 SEC by one of two companies, DFIN or TM, even though, as you
11 can see on the left-hand side of your screen, those two firms
12 handled less than half of all earnings reports filed during
13 that same period, just 44 percent. Here's why that's so
14 important: Because you will learn that a company's choice of
15 filing agent has absolutely nothing to do with the performance
16 of the company or the value of its stock. It's, in fact, not
17 that different from whether a company chooses to buy its office
18 supplies from Staples or Office Depot.

19 The evidence will show that if the defendant's trading
02:26 20 had nothing to do with who the filing agent was, you wouldn't
21 expect more than about 44 percent of his trades around earnings
22 would involve the earnings of companies that used DFIN or TM.
23 But you will learn that when the defendant and his co-
24 conspirators traded around earnings, they almost never traded
25 in the shares of companies whose earnings were filed by any

1 other filing agent. The evidence will show that of the 356
2 times the defendant traded on earnings between January 2018 and
3 September 2020, 343 of those reports were filed by DFIN and TM,
4 who had just 44 percent of the market.

5 Mathematically that's not unlike flipping a coin 356
6 times and having it come up heads 96 percent of the time. And
7 the evidence will show that that was no accident because TM and
8 DFIN were the companies they hacked. And the defendant's
9 trades around those earnings were remarkably profitable.

02:27 10 Between January 2018 and September 2020, the conspirators
11 earned close to 100 million dollars trading around the earnings
12 of DFIN and TM clients, even though, as I mentioned, they were
13 not very good traders who either made very little money or lost
14 money on all their other trades.

15 One example of that is Tesla, which I mentioned a
16 moment ago. You will learn that between January 2018 and
17 September 2020, the defendant personally made more than 4
18 million dollars trading around Tesla's earnings announcements.
19 That's when he had tomorrow's news today. By comparison, the
02:28 20 evidence will show that he lost close to 6 million dollars on
21 all his other Tesla trades, trades that were unrelated to the
22 earnings reports his hackers stole from DFIN's computer
23 systems.

24 In fact, the evidence will show that the conspirators
25 were such amateurs at trading that they thought about hiring a

1 professional to help them trade more effectively and better
2 figure out how the financial reports they had stolen would move
3 the market. But there was just one problem, they didn't want
4 that person in on their scheme. So they came up with a cover
5 story.

6 They would tell the professional they hired that their
7 trading ideas came from a computer system that analyzed
8 publicly available information gathered from news and social
9 media sites, the kind that M-13 actually monitored for its
02:29 10 clients. But they would hide the fact that the data that they
11 were relying on was actual real earnings reports that they had
12 stolen. You will learn that Ermakov and Rumiantcev discussed
13 their plan in an encrypted message exchange using an app called
14 Threema, where users can message each other using anonymized
15 code that hides their identity.

16 Here I'm going to show you a graphic we created with a
17 translation of the exchange and the speakers identified by name
18 because, as the evidence will show, the FBI was able to
19 determine which anonymous code belonged to which hacker.

02:29 20 Rumiantcev proposed telling the professional they were
21 going to hire that they had developed a system for mass media
22 analysis which collects data from the media and social
23 networks. But they would modify the data somehow so that the
24 person would think that the materials had been found in an open
25 source. That's public information.

1 In case he will work well, we will lure him in to work
2 for us. We will be adapting the raw material while preserving
3 the essence, but there would be no chance of passing it as is.

4 How did Ermakov respond? The main problem here is
5 that should he realize the data is real, he would not start
6 using it on the side or be selling it.

7 And look at what Rumiantcev suggested. If we want to
8 really protect ourselves, we can create fake documents to mix
9 with the real or just old ones. Only we will know what
02:30 10 forecasts are based on real data.

11 In that same encrypted Threema chat, a chat that
12 evidence will show the conspirators thought no one would be
13 able to see or be able to link to them by name, they discussed
14 spreading their trades among different brokerage firms to avoid
15 arousing suspicion. You will learn that Ermakov told
16 Rumiantcev, I already told Vlad, that's the defendant, we need
17 to think about reducing accounts. Such a number of accounts
18 with the same securities with the same broker is a bad idea.
19 We need to talk together and assess the risks. To collect 10
02:31 20 million is not a problem. The problem is to manage them
21 without risks and safe for everyone without arousing suspicion.
22 And they discussed choosing brokers they thought would not
23 cooperate with the SEC.

24 Members of the jury, you will learn that approximately
25 one year after this exchange, the defendant's brokers at Saxo

1 Bank did get suspicious about his remarkably profitable
2 trading, and Saxo started to ask questions. And when it did,
3 the defendant and Rumiantcev gave the bank the exact same
4 preplanned cover story that they were going to use to hire a
5 professional trader about their purported system for generating
6 trading ideas from open sources and mass media and social
7 networks.

8 But here's what else you'll learn. In that same
9 encrypted Threema chat, a chat they thought no one would ever
02:32 10 be able to see or trace back to them by name, in that chat, the
11 defendant slipped up. He got careless and he sent Rumiantcev
12 and Ermakov these photos of their investors, Varshavskiy and
13 Uryadov. Photos that anyone that got access to that anonymized
14 Threema chat would be able to identify. He wrote this message:
15 What did we earn today? Our comrades are wondering.

16 And that prompted this exchange: Ermakov: Vlad, you
17 are exposing our organization. This is bad. Rumiantcev:
18 Vlad, stop sending to Threema. Klyushin: So sorry. Ermakov:
19 And that's how they get you and you end up as a defendant in a
02:33 20 courtroom. You are exposing our organization and that's how
21 they get you, and you end up as a defendant in a courtroom.

22 Members of the jury, you will learn that Ivan Ermakov,
23 the defendant's good friend, was right to be concerned because
24 the FBI did in fact catch up with Vladislav Klyushin about 20
25 months after these text messages were exchanged on March 21,

1 2021. On that date, the defendant was arrested at an airport
2 in Seon, Switzerland. And you will learn that the very first
3 person his wife texted minutes after that arrest was Ivan
4 Ermakov.

5 For his actions the defendant is charged with several
6 crimes. Judge Saris will describe those charges to you and
7 instruct you on the law in detail at the end of this case. For
8 now I'm simply going to give you a brief overview but it is
9 Judge Saris's instructions that you must follow.

02:34 10 In Count One he's charged with conspiracy to obtain
11 unauthorized access to computers, to commit wire fraud and to
12 commit securities fraud. Conspiracy you'll learn is simply a
13 legal word for an agreement or understanding between two or
14 more people to do something that's against the law. The
15 agreement in this case was among the defendant, Ivan Ermakov
16 and Nikolay Rumiantcev and others to hack into protected
17 computer networks, to steal material non-public information
18 about publicly traded companies, and to trade stocks on the
19 basis of that information.

02:35 20 In addition to conspiracy, which is the agreement to
21 commit any one of those crimes, the defendant is charged in
22 Count Two with actually committing wire fraud, for stealing
23 that valuable confidential information from DFIN via that
24 Boston IP address.

25 In Count Three, with gaining unauthorized access to

1 DFIN's protected computers.

2 And in Count Four, with securities fraud for trading
3 on that inside information.

4 We're going to prove these crimes to you using various
5 different forms of evidence and we're going to ask you for your
6 patience, because the evidence has to come in in bits and
7 pieces and there will be a fair number of documents, computer
8 logs and IP records showing how DFIN's and TM's computer
9 networks were accessed and their clients' financial filings
02:35 10 were downloaded. Photographs and other evidence from the
11 conspirators' iCloud accounts connecting them to one another
12 and to these crimes, text messages and other encrypted messages
13 like the ones we just looked at in which they talked about
14 their scheme, a recorded call between the defendant, Rumiantcev
15 and representatives of Saxo Bank in which the defendant denied
16 trading on inside information and offered that preplanned cover
17 story.

18 You'll also hear from cyber security specialist who
19 DFIN and TM hired and from employees like Julie Soma, who will
02:36 20 tell you that she didn't download all those financial reports,
21 some of which were downloaded in the middle of the night while
22 the employees were fast asleep.

23 You'll also hear from an SEC expert, who will describe
24 the remarkably profitable parallel trading by the defendant and
25 his co-conspirators, their uncanny ability to predict earnings

1 surprises, and the unusual correlation between the stocks they
2 traded and the fact that those companies used DFIN and TM to
3 file their earnings reports. And there will be other witnesses
4 as well.

5 In the end, the evidence will show that the defendant
6 conspired with others to trade based on secret information they
7 stole from DFIN and TM, that he in fact traded on that
8 information, and that he and his co-conspirators made close to
9 90 million dollars by cheating the market and by breaking the
02:37 10 law.

11 And after you have seen and heard all of the evidence,
12 Mr. Kosto and I will have an opportunity to speak with you
13 again. When we do, we will ask you to deliver the only verdict
14 consistent with that evidence, that the defendant, Vladislav
15 Klyushin, is guilty beyond a reasonable doubt exactly as
16 charged. Thank you.

17 THE COURT: Okay. Mr. Nemtsev.

18 MR. NEMTSEV: Good afternoon, ladies and gentlemen of
19 the jury. It's been a very long afternoon, and I promise to
02:39 20 keep this short.

21 I always have to say --

22 THE COURT: Please speak up so I can hear. Maybe take
23 the mic and put it right there.

24 MR. NEMTSEV: Sure. My name is Max Nemtsev.

25 THE COURT: So much better.

1 MR. NEMTSEV: Perfect. Along with my co-counsel, Mark
2 Fernich, and our assistant, Timothy Picard, we have the honor
3 and privilege of representing Mr. Klyushin before you today.

4 The evidence in this case will compellingly
5 demonstrate that Vlad is not just presumed innocent but that
6 he's factually and legally innocent of all the charges against
7 him. This is not a case where he was driven by greed. He was
8 financially successful long before he entered into a single
9 stock transaction.

02:40 10 The government will put up pictures of dinners and
11 golfing and him at various events, but you'll see that that's
12 all smoke and fog to distract from reality, that they don't
13 have direct evidence, that this case is built on gaping holes
14 and inferences that don't even come close to meeting their
15 burden. Don't fall for it. There's nothing illegal about
16 being Russian, about having wealth, about having an IT company
17 that contracts with the government.

18 So who's Vlad? He's the father of five children. He
19 owns a successful IT company that also provides cyber security
02:41 20 services. You'll see that he has hundreds of employees. And
21 he's not one to cut corners. He's worked since 13 years old.
22 He put himself through law school, through business management
23 school, and worked tirelessly, day in and day out, to build a
24 successful IT company.

25 The company's main product assists with research by

1 monitoring more than 40,000 publications like CNN, Fox,
2 Bloomberg, Facebook, Twitter and other media outlets on any
3 given subject that you want. It analyzes the tone. It takes a
4 look if it's positive or negative, and it's frequently used to
5 evaluate the effectiveness of press releases and marketing
6 campaigns. And naturally the system can be adapted to review
7 news and publications concerning publicly traded companies,
8 which is exactly what Vlad set out to do. You'll learn that he
9 spent significant resources building an infrastructure at his
02:42 10 company to analyze and review publications and news, to make
11 predictions and forecasts for stocks. It's well known that
12 investor sentiment, meaning whether the general public believes
13 a stock will go up or go down, is potentially a more accurate
14 predictor than actual company fundamentals. It's been
15 recently -- you've probably seen it in the meme stock error or
16 Game Stop, a company that loses revenue consistently goes to
17 astronomical heights. That's what Vlad set out to do, predict
18 the market using resources at his disposal, to use the news
19 monitoring services that he had to gauge interest in a stock
02:43 20 and use analytics and artificial intelligence to make
21 predictions on whether to buy or sell stocks.

22 He paid for subscriptions, asked his teams to purchase
23 expensive Bloomberg materials, all in effort to get as much
24 information as possible. His system came to be known as
25 Preston. You'll see in his communications with a major Danish

1 investment bank that he created an application, that it was
2 available on the Apple store for download, that he provided
3 that access to that major Danish investment bank, that the
4 staff at that bank tested that system, that they liked it.
5 They expressed interest in it, using it internally.

6 Here's an email from one of the employees at Saxo Bank
7 saying, Our colleagues first got acquainted and were impressed
8 by the algorithm for selecting publications and mentions of the
9 company. The goal was to use that system that he implemented,
02:44 10 all the resources that he put into it, to trade and offer that
11 research to other investors.

12 Obviously all these analytics and trading required a
13 team of people to support. And as Vlad openly admitted in that
14 Threema chat, the secret communications that the government
15 will point you to, he said, I am a little of use in active
16 trading. For reviewing the analytics that come from his
17 systems and executing trading strategies, Vlad relied on
18 Mr. Ermakov and Mr. Rumiantcev. Vlad's role was not in the
19 technology or computer world. He doesn't have a tech degree.
02:45 20 His skill was attracting investors while his team traded in his
21 accounts and through powers of attorneys that they filed with
22 these brokers and the accounts of his investors. Everything
23 was out in the open.

24 So in this secretive chat, conspiratorial chat, Vlad
25 openly discusses with Mr. Rumiantcev what information he's

1 gathering and what information they're trading. In this
2 example, and they just highlighted an example to you about
3 Tesla, Mr. Rumiantcev says, "We have the Tesla collection set
4 in Twitter at 100 percent. Based on the ticker only, we get
5 18,000 messages per week." That's the amount of information
6 they're collecting only from Twitter a week. And Mr.
7 Rumiantcev says it's been difficult analyzing. But Vlad tells
8 him in response, "We're trading thanks to this know-how only.
9 Everything is done by Nuron Networks plus monitoring."

02:46 10 According to the government, every single person in this chat
11 is a co-conspirator, somebody who's in on the scheme, but no
12 one tells Vlad, what are you talking about? No one tells him,
13 We're not trading on our news analytics, we're trading on
14 hacked information. No one says, Vlad, why are you making us
15 analyze 18,000 messages per week when we just have the earnings
16 reports at our disposal? The government has not and will not
17 provide you with an answer to this pivotal question. This,
18 ladies and gentlemen, is reasonable doubt. Why hire a staff?
19 Why create programs? Why monitor so much information if you
02:47 20 have access to the actual earnings reports that are going to be
21 public ahead of time?

22 The government tells you that these reports by
23 themselves would be a gold mine. There'd be no reason to do
24 all of this extra work. And Vlad has no reason to lie to his
25 co-conspirators. The government won't tell you that he has any

1 incentive to lie to these people. They are, according to the
2 government, active participants in this scheme.

3 And Vlad's a convenient target for the government. He
4 owns an IT company that also offers cyber security services,
5 including penetration testing, which, as they told you, is a
6 form of simulated attacks to educate companies and individuals
7 about their cyber security vulnerabilities.

8 But there will be no evidence that Vlad hacked or ever
9 requested anyone to hack Donnelly or Toppan Merrill. And that
02:48 10 fact is almost self-evident. Look at this timeline. The start
11 of intrusions that the government has been able to identify per
12 review of log files is February 2018, and they just told you
13 that the intrusions could have occurred even sooner.

14 Vlad's first transaction, the first time that he had
15 an account open was five months later, in July of 2018.
16 Intrusions ended in September of 2020, but Vlad continued to
17 trade through May of 2021 until his arrest. And he had no
18 motive, no incentive to engage in hacking or requesting
19 somebody to hack. There will be no evidence that he received
02:48 20 any earnings report or that he ever spoke about the two filing
21 agents in this case. Despite the enormity of the internal
22 resources of the FBI, there's zero evidence Vlad ever saw or
23 possessed an earnings report. And if he had such access, you
24 can imagine that that would be Exhibit No. 1 in the
25 government's presentation.

1 As you will hear, as part of the investigation of this
2 case, the government obtained search warrants for the entirety
3 of Vlad's emails and iCloud accounts. They seized a tremendous
4 amount of information going back more than 20 years, 130,000 of
5 his messages, 95,000 pictures. And in all of that, there is
6 not a single word about the two filing agents. There was not a
7 single earnings report that they located. The FBI conducted
8 similar seizures of Mr. Ermakov and Mr. Rumiantcev's iCloud and
9 also found no earnings report or any reference to DFIN or
02:50 10 Toppan, the two filing agents in this case.

11 As for Mr. Sladkov and Mr. Ermakov, you'll learn that
12 they had accounts and traded long before Vlad. You'll hear
13 that Mr. Sladkov traded as early as 2017. I don't know how
14 Mr. Sladkov or Mr. Ermakov traded or what information they had.
15 All I can tell you is there's no evidence that Vlad ever met
16 them or communicated with them, no evidence that they shared
17 any information with Vlad. Not a single text or email or phone
18 record showing Vlad had anything to do with their trading.

19 Mr. Ermakov was friends with Mr. Sladkov. I don't
02:50 20 know how close they were but, again, there's no evidence that
21 the two of them shared any earnings reports or ever discussed
22 the two filing agents in this case. There's no evidence that
23 Vlad and Mr. Ermakov spoke about Mr. Sladkov or Mr. Ermakov or
24 that Vlad even knew about their existence.

25 There also will be no evidence that Mr. Klyushin

1 willfully and knowingly, terms that I expect Judge Saris to
2 define to you, traded on insider information. Mr. Klyushin's
3 trading itself doesn't support a finding that it was based on
4 material non-public information. The government will present
5 to you snippets of the trading activity. They'll put before
6 you dozens of charts, but they won't tell you that if you look
7 at the trading globally, the majority of Mr. Klyushin's
8 transactions were either not or could not have been based on
9 insider information.

02:51 10 Between July 2018 and September 2020 potentially 343
11 transactions could have been, but have not yet been proven to
12 be related to hacked information. 204 transactions simply
13 couldn't have been based on the information. And his trading
14 after September of 2020, it continued. The hacks ended and he
15 continued trading in much of the same companies, including
16 Tesla and Microsoft and Grubhub.

17 Now, imagine if you had access to the gold standard of
18 insider information on thousands of companies, why would you
19 ever trade any other company? Why would you continue trading
02:52 20 after access to that information ended? You wouldn't.

21 If you look at Mr. Klyushin's transactions as a whole,
22 much of his trades was not based on -- was not surrounding
23 earnings announcement and didn't involve the companies that
24 used the two filing agents.

25 You would also imagine that he'd be wildly successful

1 in his trading. You can pick and choose what company you
2 trade. You can pick and choose the earnings announcement. The
3 government makes it seem like it's so difficult to see if a
4 number that is predicted is higher or lower, but it's not. You
5 would imagine having this information and being able to pick
6 which earnings reports you're going to trade on and what
7 companies at what time, you would be nearly a hundred percent
8 successful at all times. But that's not the case. Vlad was
9 about 55 to 65 percent successful, both before and after the
02:53 10 hacks ended. That's not indicative of insider information.
11 It's the antithesis of insider information.

12 And the government brings up Tesla as an example where
13 they say Vlad must have had insider information. There's no
14 evidence that he had the Tesla report in his possession or that
15 anyone he spoke with had that report in their possession. Once
16 again, if you'd take a look at these chats, you'll see how
17 Mr. Rumiantcev and Mr. Ermakov analyzed Tesla. They say we
18 analyzed some social media, they are analyzing car sales growth
19 from June 2019 there. And he sends a link. EV sales went up
02:54 20 120 percent last month. And they discuss it. And Mr. Ermakov
21 says, they have moved the release date from August 5 to July
22 24, which is a public move that they made, meaning they told
23 the market this is what they were doing. Such thing happened
24 last time. Figures were better than expected.

25 You will hear from a financial analyst, from a trader,

1 someone who does this professionally, the October 2018
2 transaction that the government pointed to you, Tesla did the
3 same thing. They had record-breaking production figures and
4 they moved up their earnings announcement date and that's why
5 they bought the stock and that's why he recommended and told
6 his investors, look at it, it's going to go up. And that's why
7 that stock price went up by nine percent the day before any
8 earnings announcement was publicized and continued to go up
9 afterwards. Everyone was buying Tesla on that information.

02:55 10 The government also showed you this chat. It's a chat
11 from February of 2019 and you'll see that Mr. Klyushin never
12 saw that chat. He couldn't have seen that chat. He wasn't
13 part of the group until three months later, in May of 2019.
14 It's a message out of context and I wish I could ask
15 Mr. Rumiantcev or Mr. Ermakov what they meant by this real or
16 not real data. I'm sure Mr. Klyushin wishes he could ask them.
17 But he can't. He didn't know about it and no one told him
18 about it.

19 They also showed you a chat in response to
02:55 20 Mr. Klyushin sending pictures of the investors. You'll see
21 earlier in that chat that he did the same thing by revealing or
22 sending those investors' names. And everyone was mad at him,
23 not because he was disclosing some sort of hacking scheme.
24 It's because he was breaching the privacy of those investors
25 who expected that their names would not appear. There was no

1 illegal scheme. It was just privacy protections.

2 And there's an additional issue you should keep in
3 mind. How did this case come before you today? Why did the
4 government take Vlad from his home thousands of miles away and
5 put him on trial before you in Boston, Massachusetts? And it
6 all comes down to an allegation of a single IP address out of
7 the tens of thousands that were located in DFIN's log files,
8 that that specific IP address was assigned to a server in
9 Boston, Massachusetts. There's going to be no proof that Vlad
02:56 10 actually used that IP address. There's going to be no proof
11 that Vlad was ever in Massachusetts or ever in Boston.

12 You'll learn about IP addresses. They're not the
13 equivalent of a Social Security number. They're not specific
14 to a person. You'll hear evidence that we've run out of IP
15 addresses many years ago. And the only way for everyone to
16 access the Internet is to share these IP addresses, these
17 limited resources. To make matters more complicated, that
18 specific IP address belonged to a company, a VPN, and the VPN
19 provider was StackPath. VPNs are specifically designed to
02:57 20 protect the privacy of the clients by aggregating Internet
21 traffic, aggregating multiple users, for them to use one IP
22 address. Who's using it fluctuates every hour. One hour could
23 be you. The next hour it could be the rest of the courtroom.
24 There would be no evidence that Mr. Klyushin, or anyone else
25 associated with him, ever used that IP address. Despite all of

1 the IP records in this case, the FBI has never been able to
2 associate that IP address with use by any of the individuals in
3 this case.

4 But this is just one issue. Not only can the
5 government not establish that Mr. Klyushin or any of the other
6 defendants used that IP address, but they also can't establish
7 that that IP address was in Boston, Massachusetts at the time.

8 The company that owned the rights to the IP address,
9 StackPath, it had no servers in Boston. So the only way that
02:58 10 it could place that IP address and put it in Boston was to rent
11 a server from another company, Micfo. But there are two big
12 issues you should know about. There's not a single invoice
13 between Micfo and StackPath confirming that StackPath actually
14 leased that equipment in October of 2018. The first invoice is
15 in December of 2018. And, second, no one from Micfo will tell
16 you that they took that IP address and placed it on one of
17 their servers in Boston, Massachusetts.

18 And while it may seem trivial, venue, the place that a
19 defendant is to be tried, is an important constitutional
02:59 20 protection. It was intended to address the British taking
21 American citizens and trying them in Britain. It's a safeguard
22 designed to stop the government from taking a person like Vlad
23 and trying him anywhere they want in the United States.

24 You know, just like Americans can't be extradited to
25 Russia when all the trades are in America, a Russian should not

1 be on trial in Boston for an offense having zero to do with
2 Massachusetts.

3 I do want you to remember one thing. The government
4 is the only one with a burden in this case. Neither myself,
5 Mr. Fernich or Mr. Klyushin have to say a single word in his
6 defense. The government has pointed the finger, made the
7 allegations, and now they have to prove them to you beyond any
8 and all reasonable doubt.

9 It's easy to say beyond a reasonable doubt. But in a
03:00 10 very real way, it requires us to go against our human nature.
11 I know myself and probably many of you have experienced someone
12 accusing us of doing something, saying something, and we all --
13 or at least I do, I have this instinct to defend myself and say
14 no, I didn't say that. No, I didn't do this. We try to
15 explain ourselves. We try to disprove the allegations levied
16 at us. But wouldn't it be nice that the accuser in our
17 everyday lives had to prove those allegations in the first
18 place? Well, that's what the law requires. It requires the
19 accusers, the entity that pointed the finger, to be solely
03:01 20 responsible for proving the allegations. The government here
21 made accusations, pointed the finger. Now they must prove them
22 to you.

23 At the end of this case I'm convinced that we'll be
24 able to stand before you with credibility and ask you to acquit
25 Mr. Klyushin of each and every charge of the indictment, not

1 out of sympathy but out of justice.

2 Thank you very much for your time.

3 THE COURT: Thank you. All right. We'll stand in
4 recess.

5 Remember, don't talk about the case. We'll see you
6 tomorrow at 9:00. We'll go from 9:00 until 1:00.

7 THE CLERK: All rise. You can leave your notebooks
8 there. If you have a question -- leave your notebooks on the
9 chair.

03:02 10 (Jury exits.)

11 THE COURT: Who's the first witness tomorrow?

12 MR. FRANK: The first witness Your Honor, will be Marc
13 Brawner.

14 Your Honor, we do have an objection to one statement.

15 THE COURT: Can I just -- so Marc Brawner. How long
16 will he be?

17 MR. KOSTO: Approximately an hour on direct, Your
18 Honor, maybe a little less.

19 THE COURT: How long do you think you'll need on
03:03 20 cross?

21 MR. NEMTSEV: Twenty to 30 minutes.

22 THE COURT: Okay. Who's next?

23 MR. KOSTO: Benjamin Oliver, an employee of Toppan
24 Merrill, approximately 30 minutes on direct.

25 THE COURT: We're now at the break. How long do you

1 think on cross?

2 MR. NEMTSEV: Fifteen minutes.

3 THE COURT: We're now at quarter to 12:00. Who's
4 next?

5 MR. KOSTO: Daron Hartvigson, the consultant who
6 responded, or one of the consultants who responded at Donnelly
7 Financial. Again, 45 minutes or so to an hour on direct.

8 THE COURT: Okay. We're getting close to the break.
9 How long do you think you'll be with him?

03:03 10 MR. NEMTSEV: I honestly don't expect it to be a long
11 cross, 20 minutes, 30 minutes, Your Honor.

12 THE COURT: In case it goes more quickly, is there
13 someone on deck?

14 MR. KOSTO: Yes, Your Honor. We'll have a fourth
15 witness here as well.

16 THE COURT: Who would that be?

17 MR. KOSTO: Bryan Garabo from Donnelly Financial.

18 THE COURT: Have you given them the documents that
19 you'll be introducing through each of these people?

03:04 20 MR. KOSTO: We'll send a note over to Mr. Nemtsev and
21 Mr. Fernich.

22 THE COURT: I can't require you to show the docs on
23 cross, but to the extent that it's something that you're
24 planning on putting in and you don't want to spend -- if it's
25 objected to, would you please try and front it so we don't

1 spend hours at sidebar.

2 MR. NEMTSEV: I don't think we're going to be
3 introducing much through these witnesses, if anything, Your
4 Honor. Most of them are just employees who are going to say it
5 wasn't us.

6 THE COURT: All right. I just don't want to spend a
7 lot of time at sidebar. We'll meet tomorrow morning at 8:30.
8 So if there's any objections to documents, I'll address it
9 then.

03:04 10 MR. NEMTSEV: Thank you, Your Honor.

11 THE COURT: What's the objection? I'm sorry. I just
12 wanted to get the logistics out of the way.

13 MR. FRANK: Of course, Your Honor.

14 There was a statement just there at the end that venue
15 is important because, just as Mr. Klyushin shouldn't be dragged
16 out of Russia to be tried here in Boston, an American shouldn't
17 be dragged out of the United States and tried in Russia.
18 That's effectively the same as saying, you know, if you let him
19 be tried here, if there's venue for that here, the same thing
03:05 20 could happen to you. And that's inappropriate argument. The
21 cat's out of the bag now, but we do not believe that that
22 argument should be permitted in closing arguments. It's
23 effectively a threat to the jurors that if they're not careful,
24 the same thing could happen to them and they could be pulled
25 into Russia.

1 MR. NEMTSEV: Well, Your Honor, that's not what I
2 said. I said just like Americans can't be extradited to Russia
3 when the trades were in America, a Russian should not be on
4 trial in Boston for an offense having zero to do with
5 Massachusetts.

6 MR. FRANK: It's an inappropriate equivalency.

7 THE COURT: I'm not going to do anything about it but
8 I hear your point. We'll make sure in closing arguments we
9 tailor it more closely. Venue is an issue here.

03:06 10 MR. FRANK: We're not disputing that, Your Honor.

11 THE COURT: You didn't really front it. So, I mean,
12 they can if they want to.

13 MR. FRANK: No dispute about that, Your Honor, but
14 they shouldn't be able to say to the jury this could happen to
15 you.

16 THE COURT: I didn't take that away, that it could
17 happen to you.

18 MR. FRANK: There's no real reason to mention an
19 American being tried in Russia in the context of whether
03:06 20 there's venue in Boston.

21 THE COURT: All right. Is there anything else we need
22 to address right now?

23 MR. KOSTO: No, Your Honor.

24 THE COURT: I did want to say one thing to counsel at
25 sidebar for one second.

1 **(SIDEBAR CONFERENCE AS FOLLOWS:**

2 THE COURT: No one's fault, I'm not saying anything,
3 but Mr. Klyushin was out here for about five to ten minutes
4 before you were. The marshals brought him out because I think
5 they thought you'd be here because we said 20 past. I came out
6 just to make sure nothing was happening because I have a room
7 full of press and the prosecutor.

8 I think, MaryEllen, if we could make sure the marshals
9 don't bring him out before the lawyers are here.

03:07 10 THE CLERK: Okay.

11 THE COURT: If you're running late --

12 MR. FERNICH: It's my bad. I was working on the
13 objections to the things in the Threema chats.

14 THE COURT: The what?

15 MR. NEMTSEV: Threema chat, it's like a WhatsApp.

16 THE COURT: I had no idea what you were talking about,
17 which shows my age. I had no idea what a Threema chat was.
18 I'm willing to bet a few other people in this room don't
19 either, but anyway.

03:07 20 The big issue is I didn't want your client out here by
21 himself.

22 If you could mention it to the marshals not to bring
23 him out until the lawyers --

24 THE CLERK: I will.

25 THE COURT: -- are here. Sometimes I'm late. I'm not

1 perfect by any means. It was a little awkward, let's put it
2 that way.

3 MR. NEMTSEV: Can we leave him with Mr. Picard, if
4 necessary?

5 THE COURT: With?

6 MR. NEMTSEV: With our paralegal, if necessary.
7 Mr. Picard was here, I think.

8 THE COURT: It's up to you, but it's just -- if
9 something were to happen, the press is all here. So, okay.

03:08 10 All right.

11 MR. KOSTO: Thank you.

12 MR. NEMTSEV: Thank you, Judge.

13 (Court exits.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

We, Lee A. Marzilli and Kathleen Silva, Official Federal Court Reporters, do hereby certify that the foregoing transcript, Pages 1 through 94 inclusive, was recorded by us stenographically at the time and place aforesaid in Criminal No. 21-10104-PBS, United States of America v. Vladislav Klyushin, and thereafter reduced by us to typewriting and is a true and accurate record of the proceedings.

Dated this 30th day of January, 2023.

/s/ Lee A. Marzilli

LEE A. MARZILLI, CRR
OFFICIAL COURT REPORTER

/s/ Kathleen Silva

KATHLEEN SILVA, RPR, CRR
OFFICIAL COURT REPORTER